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The development of counterfeiting legislation in colonial New York: The relationship between modernization and 'thwart law'

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THE DEVELOPMENT OF COUNTERFEITING LEGISLATION IN COLONIAL NEW YORK: THE RELATIONSHIP BETWEEN MODERNIZATION AND 'THWART LAW'

by

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Abstract

THE DEVELOPMENT OF COUNTERFEITING LEGISLATION IN COLONIAL NEW YORK: THE RELATIONSHIP BETWEEN MODERNIZATION AND 'THWART LAW'

by
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This dissertation fills a gap in Louise Shelley's theory linking modernization and property crime. Examined is the underestimated role of law as a factor in the modernization process. Specific focus is on the potential of precise statutory language, as an intervening variable, in Shelley's pessimistic linkage. An analysis of the relationship between commercialization (an early stage of modernization) in colonial New York, and legislation enacted to thwart an increase in counterfeiting, is used to illustrate the important connection between social change and legal change, and between legal change and the modernization process.

As colonial New York commercialized, counterfeiting increased to the point of threatening the colony's economic development. A series of pivotal acts were passed between 1683-1773 that contained, within their texts, comprehensive provisions and stipulations designed to foil, frustrate, and frighten potential counterfeiters. This study breaks down these provisions and stipulations into techno-thwarts (devised to deter a variant of counterfeiting before it occurred), perimeter thwarts (structured to complicate the completion of a

particular counterfeiting act), and penal thwarts (written to make the punishments for committing outlawed counterfeiting frauds too severe to risk).

In addition to illustrating the evolution of such segmented thwart law by an emerging economy, this study illuminates the persistent struggle of lawmakers to criminalize new loopholes contrived by cunning criminals, and the incremental conversion of an offense from misdemeanor to felony. Seen are the fears, follies, and changing perceptions of a developing society, and the recurrent interplay between commercialization and legislation.

Amassed and analyzed for this research were the ninety-nine surviving counterfeiting cases recorded in colonial New York's major courts. These court records, along with other primary and secondary sources, indicate that New York's anti-counterfeiting laws were somewhat effective, that the presence at trial of Crown witnesses was critical in securing convictions, and that professional, organized criminals were more likely to be condemned to the gallows than were ordinary citizen-counterfeiters or marginal offenders. Demonstrated, and significant, is that too many essential participants in the criminal justice system (e.g., constables, jailers, jurors) failed to fulfill their obligations, thereby weakening the full potential of a unique succession of laws.

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INTRODUCTION

This study deals with the relationship between social change and legal change. Major focus is on the role of law in the modernization process. Societies experiencing modernization in their socio-economic orders also face the need for the establishment of a formal justice system. Law, which previously may have been little more than a sum of moral statements, now is likely to become a prescription for social control.

No longer will "Natural Law" suffice. Gone is any assumption that individuals are driven solely by rationality based on morality, that everyone understands and abides by internalized rules of behavior. Priorities and power relations change in a modernizing culture. "Positive Law" is required. Economic development proceeds from proclaimed, enforced, man-made rules of

human conduct, consistent with the new social order. Individuals are governed as law abiding members of an organized society (Biddle, 1961).

A justice system based on "Positive Law" acknowledges that individuals are not driven solely by rationality based on morality, but by rational and irrational instincts (Abraham, 1986). Some of these instincts, such as greed, or envy, can lead to immoral behavior, or to acts which a newly developing culture comes to define as illegal. This is especially true when a society becomes production oriented and new goods and services are everywhere visible.

As societies modernize, people who never before felt deprived may experience "relative deprivation" on seeing that others have what they do not. This feeling of relative deprivation can lead some individuals to commit unethical and violent acts (Blau & Blau, 1982). Thus the need for criminal law to limit the scope of deviant and criminal behavior and thereby sustain the growth of a newly developing economy.

Economic development does not demand a twenty year game plan, an M.B.A. educated management team, or a hierarchy of result-oriented committees. There are several ways it may be achieved. Always essential is a system of official behavioral regulations and restraints. Without such rules entrepreneurship and economic expansion are threatened (Hall, 1935).

Whether we look at the economy of the currently re-emerging Ukraine, or at the emergence of eighteenth century colonial New York, socio-economic change triggers new acts, and/or new interpretations of acts, based on new opportunities and awarenesses. If such acts are perceived, by lawmakers, as threats to the developing economy, laws may be passed against them, and they then become "crimes" (Pomorski, 1975). Such was the case with counterfeiting in colonial New York.

The lawmakers of early New York were generally upwardly mobile, middle-class property owners concerned with promoting their own priorities. Farmers and merchants, they wanted to accumulate large tracts of land, sell their produce and products, and realize the largest profits possible. By the middle of the eighteenth century some would be the manor lords and shipping gentry of a bustling commercial colony (Hofstadter, 1980). One thing, which could dampen their dreams, would be widespread counterfeiting activity. Commerce needs a sound monetary system in order to flourish. A debased currency restricts trade. Thus the enactment, in colonial New York, of laws aimed at controlling the growth of counterfeiting.

Colonial New York's experience with counterfeiting legislation provides an excellent opportunity to study modernization and legislation in an historical context with present day applications. A remarkable number of laws, clauses

within laws, and modifications of laws, were created in eighteenth century New York in an attempt to deal with would-be counterfeiters, as well as with those who found loopholes in the laws, violated the laws, or engaged in variants of counterfeiting fraud not yet outlawed. Legislators developed new, updated, clearly written laws as they struggled to keep up with the lawbreakers, and with those who might be challenged by the idea of crafting false currency. It was hoped, and believed, that correctly constructed laws might deter counterfeiting acts, or inhibit the degree of damage counterfeiters could inflict. Commercial interests could be preserved, and the move towards modernization could be safeguarded.

In colonial New York there were those who were adept at transforming a 3 shilling note into an 8 shilling note by closing the openings on the number 3 so well that only the most trained eye could detect the alteration. Similarly, there were artistically inclined individuals who possessed sufficient talent to flawlessly imitate intricate bill designs. Engravers and plate makers on both sides of the Atlantic cooperated with those determined to profit from the circulation of false bills. Some metalsmiths, more comfortable working with metal than paper, created dies and stamped out their own bogus coins. Money manipulation of this sort, or some variation of it, or other frauds unrelated to currency corruption, could arise, and are

arising, in modernizing societies today.

This situation may be controlled, to some extent, by effective, enforceable laws. A trip back in time to commercializing, early New York is warranted. The colonists of that time and place were eager to sustain their fledgling colony, and came to understand the relationship between commercial development and anti-counterfeiting criminal law structured to foster it. Their approach to dealing with individuals capable of obstructing the modernization process can be instructive to those societies now interested in economic advancement.

Beginning with an examination of the general relationship between social change and legal change, this study narrows to a specific analysis of the connection between commercialization (an initial stage of modernization) and what is termed 'thwart law.' The evolution of anti-counterfeiting legislation in colonial New York is used to illustrate this latter relationship. Each chapter of this research addresses separate and significant aspects of the interconnectedness of modernization, crime, and law:

Chapter I: The Relationship between Social Change and Legal Change

Modernization and 'Thwart' Law are part of the larger classifications of Social Change and Legal Change. This chapter discusses the reciprocal interaction of Social Change and Legal Change. Addressed are questions such as: What is 'social change?' Why does a society change -- population expansion, cultural

diffusion, religious transformation, political transformation, crisis (wartime, environmental, health, personal)? Is social change inevitable? Is it always an indicator of some form of social progress? How do the changing laws of a society give us an insight into the changing values, goals, and fears of that culture?

Chapter II: Modernization and Law

This chapter examines that aspect of social change known as 'modernization.' An operational definition of modernization is provided along with an analysis of the political, economic, social, and moral components of modernization. Analyzed here is the role of law in the modernization process. How does legal change affect modernization? In what ways does the nature (e.g., repressive vs. restitutive vs. responsive) of law change as a society modernizes? The differing theories of Weber, Marx, Hall, Rostow, Durkheim, and others are discussed in this context.

Chapter III: Modernization, Crime, and Thwart Law

Louise Shelley's theory of a causal connection between modernization and crime, and her underestimation of the power of law as an agent in the modernization process, are presented here as having motivated my research into whether the development of effective statutory law can thwart the connection between modernization and crime. My concept of 'thwart law' as an intervening variable between modernization and crime (analyzed in

this study in terms of the connection between commercialization and counterfeiting in colonial New York) is introduced. What is thwart law? When is it most pertinent, as an intervening variable, to the modernization/crime model? When is it most and least likely to be effective? Which types of crimes might it suppress? What special interests does it serve? Who will be most thwarted?

Chapter IV: Commerce and Counterfeiting in Colonial New York

Covered here are the development of commerce (an early stage of modernization) and counterfeiting (a property and political crime) in colonial New York. Quantitative data showing a concurrent increase in both is presented. The histories of commerce, currency, and counterfeiting in seventeenth and eighteenth century New York are provided. Addresssed are questions such as: What was the relationship between commerce and counterfeiting? How did geographical mobility aid the merchant and the counterfeiter? What was the relationship between Britain's repressive monetary policies and counterfeiting in colonial New York? Who profited from counterfeiting? Who was hurt by it? What efforts were undertaken to make New York's currency counterfeit-resistant? How did the colony's newspapers attempt to suppress counterfeiting frauds?

Chapter V: The Anti-Counterfeiting Laws of Colonial New York

Along with the rise of commerce and counterfeiting was the development of laws aimed at assisting the former by suppressing

the latter. Provided here is an analysis of this legislation. Who made these laws? What variants (e.g., coining, passing, altering) of counterfeiting were covered by each law? What specific historical event(s) triggered the various laws? How do we see the results of the modernization process (e.g., increased geographical mobility, new technology) reflected in the text of the legislation? How was the legislation worded for maximum effectiveness? How severe were the penalties for violating the laws? Pursuing my concept of thwart law, specific attention will be given to the kinds of thwarts written into each law in order to deter would-be counterfeiters.

Chapter VI: The Record Shows .....

Given the development of counterfeiting, and the laws aimed at suppressing it, how seriously were these laws taken? Based on an analysis of the laws and the court records, what conclusions might be drawn about the effectiveness of the counterfeiting legislation? Did the law avert certain specific counterfeiting acts related to modernization (e.g., out-of-colony 'passing')? Did the modernization process trigger new variants of counterfeiting fraud (e.g., plate making vs. coin clipping), that generated new laws and new convictions? What types of individuals (merchants? mariners? young men? housewives?) were tried under these laws? Who was most likely to be convicted? How important were character witnesses? Under what conditions were pardons given? Using all the

trial court records available from the New York Court of Sessions and the Supreme Court of Judicature, and facts gathered from supplementary primary and secondary sources, an attempt is made to answer these and other questions relating to the indictment, prosecution, and sentencing of counterfeiters in colonial New York.

Chapter VII: Constables, Jailers, Jurors, and Other Participants in Colonial New York's Criminal Justice System

This chapter examines the combined response of colonial New York's criminal justice system to counterfeiting. Discussed are the roles of pivotal participants such as private citizens, constables, jailers, and jurors -- those individuals without whom the laws and the courts would not work. Covered are questions such as: Who were the policemen of colonial New York? What was their major role? How were they perceived by the public? How effective were they in bringing suspected counterfeiters to trial? Who were the jailers, jurors, justices, and hangmen of New York colony? How honest were they? How sympathic were they to accused counterfeiters? How secure were the colony's jails? What kind of cooperation existed between the governments of the various colonies regarding the capture and return of runaway counterfeiters? Primary and secondary sources are used to answer these questions.

Summary and Conclusions

This final chapter recapitulates the social, economic, and legal forces behind modernization and counterfeiting legislation in colonial New York. All preceding chapters are summarized and the major questions posed by this study are reviewed. Included here is a discussion of how the insights gained from this research might be applicable to the modernization process currently underway in many parts of the world. Several ideas in need of future research are suggested.

CHAPTER I: THE RELATIONSHIP BETWEEN SOCIAL CHANGE AND LEGAL CHANGE

To analyze the relationship between modernization and thwart law, it is necessary to understand the larger classifications under which the terms 'modernization' and 'thwart law' fall. Modernization falls under the heading of 'Social Change.' 'Thwart Law' is a specific type of 'Legal Change.' Social Change and Legal Change are of enduring concern to all social scientists, and to sociologists in particular (Vine, 1967). Most societies change over a period of time; and certain social controls, law being paramount, greatly influence the direction and outcome of this social change (Nonet & Selznick, 1978).

Ideas regarding the relationship between social change and legal change are found in the histories of social thought of many cultures. Plato lived in a period (427-347 B.C.) in which the Greek city-state was a socio-political, as well as a geographic, unit. In The Republic he presents the ideal society as one in which society and state are a singular entity based on moral principles. Social structure and legal structure are so intricately intertwined that one cannot change without the other (Plato, 1966).

As the Christian Church grew powerful, social structure and religious structure became intricately intertwined. By the Middle Ages, the law of God was primary. Emphasis was not on temporal improvement through legal change, but on Heaven and a code of ethics that would enable individuals to get there. Yet codes existed to smooth daily transaction and commercial interchanges in the secular arena. Divine Law required a nod to Secular Law.

In his Summa Theologica (1920), St. Thomas Aquinas classifies "Human (state implemented) Law" well beneath Divine Law in importance, but as still essential. It is presented as necessary for human welfare, for regulating specific human needs, for monitoring social change in accordance with ultimate spiritual goals. Legal change is viewed as a means of controlling and diverting worldly interests. The ultimate purpose of secular law is to maintain the power of the Church and its dogma.

By the Renaissance we see socio-political realism rearing its head in the form of Niccolò Machiavelli. Machiavelli (1913) is concerned not with reaching the kingdom of Heaven, but rather in showing a political leader how to rule in order to keep his throne on earth. The Prince dispels the medieval doctrine of an ideal code of ethical behavior designed for rewards in the hereafter. Man is basically immoral, selfish, and greedy, asserts Machiavelli; thus, the wise leader must rule by fear and impose laws for the good of the social order. The relationship between social change and legal change is coercive and pragmatic.

Unlike Machiavelli and Aquinas, Montesquieu (1949), typifying the Age of Enlightenment, argues that law is not something a ruler imposes for either spiritual or temporal rewards. Rather it is an institutional outgrowth of specific causes, and must address specific social needs. Montesquieu is interested in the nature, more than the power, of legislation. His focus is on the precise purpose of various laws, on the social issues that are considered within the laws, on the effectiveness of the laws in promoting the well-being of the governed, on what factors, other than socio-political ones, should influence legislation.

Legal change, explains Montesquieu, is mandated by life conditions, by physical and climatic conditions, as well as by social and political conditions. Climate, he stresses, should figure into lawmaking, with different weather zones having

different laws since weather conditions influence social behavior. Cold climates, he says, make a population more energetic than do hot climates, which promote laziness. Thus, laws should reflect differences based on climatic variations.

Reason and inductive logic permeate Montesquieu's thinking. Legislation, like other social phenomena, he believes, must be subject to scientific investigation and application. For example, says Montesquieu, strong liquors, which stimulate people in cold climates, but knock them out in hot climates, should be outlawed where temperatures soar, but permitted in frigid areas. In essence, Montesquieu sees social change combined with geographical, and other, considerations as significant determinants of legal change.

Several types of significant, and sequential, relationships exist between social change and legal change. Legal change can lead to social change. Social change can stimulate legal change. This legal change may then prompt further social change. Such social change may lead to more legal change. The relationship is cyclical and endless, without even considering extraneous variables, such as climatic conditions (e.g., The civil rights movement led to the school desegregation ruling, which led to integration in the public schools, which led to legislation regarding school busing, which led to social protests, which led to the repeal of busing legislation in some areas, which led

to...).

The Chicken and the Egg Controversy

In discussing social change and legal change it is tempting to get into the chicken and egg controversy over which really comes first. Generally, social change, or the anticipation of it, triggers legal change. An event happens, or a social situation persists, or a threat exists, and law is seen as a potential problem solver. However, sequential order may depend upon social perspective and power politics. Legislation, particularly laws which attack the interests of powerless groups, can easily be seen as provoking a social response, as creating social change (Quinney, 1977).

College students protesting tuition increase legislation, for example, aren't especially interested in what led to the tuition legislation. Their anger begins with what they perceive to be the enactment of an unjust law. The law has caused social chaos on their campus, and will lead to future social problems by forcing certain students to drop out of college. Those behind the legislation, of course, see the new law not as a cause, but as an effect - a result of increased operating costs, a solution enacted to enable the college to keep its doors open.

Order of sequence is important in regard to social and legal change because the larger subject of socio-political domination is what is really at issue. Who is making the laws and for what ends?

Whose interests are being served; and whose are being ignored? Who is the problem population that the laws are seeking to control? Under what circumstances will the laws be enforced? What are the likely social consequences of attempts at enforcement (Turk, 1969)?

The questions that Turk, and other conflict theorists, raise are critical to an understanding of the relationship between social change and legal change. Those group interests that are transformed into laws become the interests of the state, and are liable to shape the social order - whether or not society at large will benefit.

If legal change is a natural outgrowth of social change that serves the needs and interests of the majority, new legislation will reflect those rules of conduct most widely agreed upon and supported. If legal change serves an empowered minority, enacted legislation, and subsequent social policy, may do little or nothing to assist the goals of the general society (Liska, 1987).

When laws are the tool of a ruling class intent on effecting social change beneficial only to their select interests, the ends served by such laws may be socially destructive. Whole classes of people may be created and criminalized merely because they threaten the agenda of the ruling class. Under such circumstances the interests of the majority are not served, and may well be subverted (Spitzer, 1975).

Law as a Preventer and Promoter of Social Change

Law is frequently viewed as a mechanism of social change, whether that social change serves the many or the few, whether it is considered 'good' social change, or 'bad' social change. However, law may also be a mechanism for preserving the status quo, for preventing social change, for maintaining the power of the state or of a special interest group. Under such circumstances, change is the enemy. It is considered undesirable, by the general population, and/or by the ruling class.

Talking about a pre-modern, non-bureaucratic legal system, Hay (1975), for example, defines law as a tool in the struggle of the patrician eighteenth century English ruling class to maintain its hegemony in the face of a swelling middle class. The law, in this situation, says Hay, has to do with preserving the position and property of a particular interest group, not with crime control. (Those in power had guards and servants. A deescalation in status, not street crime, was feared.)

Today some societies throughout the world are in limbo regarding social change. They want to preserve their traditions and maintain the status quo; but they realize they must update, or compromise, certain aspects of their culture, and amend certain legal prohibitions, in order to survive into the next century.

Carroll (1991) writes about the Arab Emigrate of Omán in this regard. He describes Omán as a physically gorgeous, 12,000 year

old culture, steeped in history, legends, and magic, but "asleep for the major part of this century, as if it were in a trance." Since 1970, says Carroll, the Oman government has sought, in big and small ways, to improve living conditions without diminishing the pride the Omanís have in their rich past. Laws promoting fundamental education have been enacted along with legislation repealing prohibitions against wearing sunglasses and using umbrellas (acts which might offend the revered forces of nature). Law here is being used not to prevent social change, but to implement it cautiously.

In keeping with the concept of change tempered by law, Nelson and Reid (1985), exploring the beginnings of American law, discuss how change was modulated by inherited law and legal ideology. Neither case law nor statute law were whimsically used to promote social change. Social, political, and economic needs, and conditions of time and place, were significant in the formulation of colonial statutes, but British common law, which surpassed immediate needs and conditions, tempered legal development and subsequent social change in early America.

Botein (1983), investigating varieties of legal experience in colonial America, also sees law as influencing social change, but he does not see Nelson and Reid's interest in tradition and cautious transformation to be of much concern. Rather, he sees special interests as shaping legal and social change.

"The rules of early American law," says Botein, "even when formulated and applied inconsistently, had the effect of recognizing or maintaining the priority of some group interests over others and of strengthening or weakening different patterns of social organization (1983:2)." The interest groups of which Botein speaks were composed of individuals more interested in shaping their futures than in preserving the past. Though acknowledging an interplay between legal change and social change, Botein focuses on select interest groups as the major force behind legal change and subsequent social change.

Law as a Looking Glass

Investigation into the relationship between social change and legal change reveals reciprocity, and reflection. Social change influences legal change; legal change leads to social change. A give-and-take, back-and-forth interdependency exists. Also, as well as the relationship being reciprocal, the element of 'reflection' exists - law reflects concern with ensuring the development of a new society. It is a looking glass into the start of a particular culture at a particular time.

Flaherty (1969) examines how the New World altered the colonists' conceptions of the role of law in society, how the unique conditions of time and place demanded the establishment of piecemeal, composite law, and how eighteenth century colonial law ultimately shaped life in the various American colonies. He

sees legal history as the focal point for understanding the workings of a society, as a valuable looking glass into the past.

"The history of the role of law in early American society can and should be a central theme," says Flaherty, "since law is so often at the heart of the functioning of a society. By asking the right questions, legal history can introduce the scholar to the deepest workings of society as revealed at the most practical level (1969:33)."

Among the questions Flaherty asks are: How did the enacted statutes reflect the basic values of the society? For what apparent or underlying reasons were certain legislative acts passed? To the degree that questions such as these can be answered, we will have entry into a past era.

Chafee (1952:53), also viewing law as a looking glass into the American past, focuses on the initial introduction of law into a beginning, New World culture. Law becomes more developed, less crude, as a society develops, explains Chafee, but in its earliest stages, it provides an insight into a migration movement, into the start of a social organization. Law, in some form, says Chafee, is established early on in any new settlement.

"When men settle in a new land, they cannot be there long without having law of some kind to adjust their disputes and regulate important transactions. They will have to put this law in operation themselves whenever the land is vacant or thinly peopled

by natives who have no power over the settler from outside. What sort of law will the settlers establish? This is a fascinating problem."

Like Chafee, Wolford (1948) also found it a "fascinating problem." He studied the development of the Massachusetts Bay Colony and the law the settlers established there. The Bay settlers enacted laws in an attempt both to adhere to the principles of freedom and to ensure the survival and smooth functioning of the new province. Wolford's focus is on the creation of statutory legislation, as opposed to other regulatory processes that existed in early Massachusetts. He describes how Massachusetts in 1648 developed the first written code of laws in English America designed to control judicial power. In keeping with the looking glass analogy, we see a colony struggling to establish the separation of power concept that would become the foundation of the American political system.

Haskins and Ewing (1958) see the law of early Massachusetts not only as reflecting political issues with which the young colony was struggling, but also as a prototype for the other American provinces, particularly the New England and Middle Colonies. The spread of seventeenth century Massachusetts legislation within the northern colonies illustrates how patterns of colonial life and thought moved from colony to colony, the practices of one province providing a model for another province.

Although much colonial legislation may have been initiated in Massachusetts, an inspection of legal procedures in early America reveals that the administration of justice was not just a colony-to-colony phenomenon. England influenced, modified, and regulated the development of law in the various American colonies.

Smith (1965) shows that though local laws were enacted to accomodate changing social conditions, a procedure was in place in the early eighteenth century whereby the British Privy Council required the enforcement of common law and heard appeals from the colonies on issues ranging from inheritance rights to the depreciation of Bills of Credit.

Similarly, Washburne (1967) focuses on the appeals process in colonial America and discusses how the British Privy Council acted to control the administration of justice (by English vs. Colonial methods) in the American colonies. Both Smith's and Washburne's accounts of legal procedure in colonial America reflect a system of dual control, with England checking American innovations. Here again, law serves as a looking glass into a collection of colonies endeavoring to incorporate local and foreign legal influence into their evolving social systems.

'Social change' - A Positive or Negative Phenomenon?

As discussed above, the term social change is very general in that it can be used to describe the decline in the power of the Christian Church, or the development of a new legal system in a

new land, or any transformation or fluctuation within a culture. It implies a shift in the structure of a society. It is the opposite of social static or social stability (Comte, 1966).

In thinking about the term 'social change' in the context of this study, it is important to bear in mind that social change is neither a specifically positive nor negative event. Whether it is positive or negative depends on the perspective of the observer, long range effects, and other factors. Nor is legislation social change stimulates or responds to necessarily positive or negative.

"Positive" social change can lead to "negative" legislation; and "negative" social change can stimulate "positive" legislation. The development of public transportation, for example, may be considered positive social change; but it can lead to negative legislation (e.g., racially segregated seating). Similarly, the rise in teenage alcohol consumption can be considered negative social change, but may prompt positive legislation (e.g., a rise in the legal drinking age).

In examining the existence of a relationship between social change and legal change major focus must be on interaction. How, for example, did commercialization in early New York create a need for anti-counterfeiting laws; and how did anti-counterfeiting laws assist commercial development? Whether or not commercialization was a positive or negative form of social change is of secondary importance in studying the process of change. It happened,

regardless of whether it was judged 'good' or 'bad' by any single socio-economic interest group!

Also, not only may social change be positive or negative, good or bad, but at different times in history a particular social fluctuation (e.g., an increase in militarization) may be viewed either favorably or unfavorably by the majority. Thus, in analyzing the process of change, it is important to understand the correlates of social change, and how legal change can interact with them to promote the well-being of a transforming culture.

The Process of Change - The Correlates of Social Transformation

"A satisfactory cause of social evolution has yet to be found... That human evolution has taken place is no more to be doubted than biological evolution. What remains in doubt is the cause of evolution (Vine, 1967:58-59)." However, by understanding the correlates of change we can create laws that minimize the negative effects change can engender. If, for example, we know that population growth is accompanied by an increase in crime, we might consider enacting deurbanization incentives. There are several correlates of social change. Different theorists stress different ones. If we view these correlates collectively, we see why most societies are not static:

(1) Population Shift.

Populations rarely stay the same. They increase. They decrease. They urbanize. They migrate. One group within a

population increases; another shrinks. Sometimes population shift is rapid; other times it is slow. Either way, as the size of a society changes, so too does the society itself.

A problematic type of population shift is what Durkheim (1947) calls "social density," a swell in the number of individuals concentrated in a certain geographic location. Social density, argues Durkheim, intensifies personality clashes and the struggle for existence between members of a given population. If that social group is to survive, such tension must be resolved. According to Durkheim, the resolution comes from "a division of labor," which leads to social change. "Organic solidarity," based on a functional interdependence between members of a group, replaces "mechanical solidarity," where division of labor is rudimentary, with most group members functioning in similar capacities and bound together by a collective conscience, and the dictates of tradition.

Whereas Durkheim claims that population density causes social change by introducing labor specialization into a society, Burgess (1925) focuses on the relationship between population density and geographic specialization, on the spatial distribution of people within a swelling geograpahic area.

Analyzing the development of a city (in this case, Chicago), Burgess concludes that social change results from the development of zones laid out in a pattern of concentric circles. Certain

individuals, and certain activities, are clustered within these different zones. As a population multiplies, no longer does it inhabit a singular physical area. Now, one zone contains commercial establishments. Another is populated by blue-collar workers. A third consists of middle-class commuters. Soon each zone begins to function as a subculture within a larger diversified culture.

Many criminologists argue that population density inadvertently introduces criminal activity (a form of Durkheim's labor specialization, and, often, Burgess' geographic specialization) into a culture. Also examining population growth in the context of urbanizing Chicago, Shaw and McKay (1931) theorize that urbanization leads to social disorganization and subsequent criminality. Primary social relationships weaken as different ethnic groups migrate into cities bringing with them conflicting cultural values and norms. Internal and external social controls deteriorate as the opportunity to accept and practice novel, and often appealing, behavioral standards is introduced into a newly differentiated social order.

In addition to causing an increase in criminality, population density also causes social change in terms of how a culture treats its entire deviant population. Rothman (1971), in studying the birth of the asylum in America, offers several social control theories to explain isolation and confinement as a mechanism of

reform, as a means of rehabilitating those who fall outside the boundaries of the collective will. He questions not the goal of social stability, but the means devised to achieve it - the social revolution in deviancy control.

"Why did Americans in the Jacksonian era suddenly begin to construct and support institutions for deviant and dependent members of the community?" asks Rothman (1971: xiii-xv). "Why in the decades after 1820 did they all at once erect penitentiaries for the criminal, asylums for the insane, almshouses for the poor, orphan asylums for homeless children, and reformatories for delinquents? ... There was nothing inevitable about the asylum. ... By what criterion is a penitentiary an improvement over the stocks or a system of fines and whippings?"

Rothman addresses these questions throughout his book; but always inherent in his analysis is population shift and socio-political attempts to deal with it. He talks about waves of immigration, urbanization, the growth of the working class, an increase in the mobile lower classes. The population was transforming rapidly, says Rothman, and the asylum "represented an effort to insure the cohesion of the community in new and changing circumstances (1971: xviii)."

Bonn (1984: 213), also looking at population shift as a factor in criminality, sees an "increased youthful population" and an "increased urban population" as key social developments leading

to an increase in recorded crime in the United States. Between 1960 and 1970, says Bonn, the number of people in the "highly prone to crime" 14- to 17-year-old population grew over 42% - to more than 15 million. "Although the number appears to have leveled off during the 1970s, the sheer size of the youthful population has been a factor in the increases in recorded crime after 1960."

Adding to the crime problem, maintains Bonn, is the fact that, "Like the youthful population, the urban population is prone to crime and has shown increases both in numbers and in percent of the American population," though currently there appears to be "a leveling off of the urban increase."

Like Bonn, Bennett (1987) sees the teenage and urban populations as leveling off in America. She forecasts a reverse migration to low urbanization states resulting in positive social change, but also warns that certain regions of the country will encounter serious social problems based upon an overconcentration of migrant workers. "Those regions in which illegal Latin-American aliens concentrate," says Bennett, "- the South and the West - will experience increases in violence among those groups (1987:89)."

Bennett also predicts that a proliferation of certain segments of our population will present grave social dilemmas. She singles out an increasing single mother population as creating "massive increases in child abuse (1987:38), and our growing

geriatic population, as triggering "an increase in unpremeditated domestic violence" due to brain impairments and physical limitations (1987:71).

(2) Cultural Diffusion

As mentioned above, Shaw and McKay (1931) looked at urbanization and the cultural diffusion that accompanies it as leading to criminality. Cultural diffusion is also a correlate of social change which produces situations unrelated to crime.

When groups foreign to each other commingle sometimes they acquire important survival skills from each other. Often they discover that they share similar problems, goals, enemies, and passions -- despite conflicting cultural values and norms. Depending on how interacting cultures process their mutual concerns, enormous social transformation may occur.

In discussing the cultural diffusion of the American Indians and the white European settlers, Maxwell (1984:149) says that initially contact between the two cultures "redounded to the benefit of both." The colonists helped the Indians to become more efficient hunters, fishermen, gatherers, and workers of wood and metal. In exchange, "...the Indians introduced the newcomers to corn, showed them what berries and nuts were edible, taught them how to hunt down the game of the forests, and provided furs."

Unfortunately, the changes Maxwell describes ultimately resulted in an unresolveable clash of interests leading to one

culture pursuing paths of greed, and the other left in need. "The cultures were mutually exclusive," explains Maxwell, "and could not coexist for long. The white man wanted land, "... and he engaged in various deceptive practices to confiscate Indian territories."

Unlike the Indian and European cultures, the various American colonies would be able to accomodate their clashes of both cultures and interests in order to achieve mutually desired freedom from British domination. Consequently, a collection of floundering, disparate New World settlements would unite into a formidable political union.

Each of the thirteen colonies was founded by different individuals and companies for different purposes. In reality, early America was a group of experiments -- financial, religious, idealistic - that would coalesce into a confederation, based on necessity. Traders, spiritualists, visionaries, entrepreneurs, and adventurers of diverse backgrounds would join together against Britain and turn a series of idiosyncratic English colonies into the United States of America (Bridenbaugh, 1971b).

Though different in mission and tradition, and often at odds with each other politically, the "media" of colonial America's cities played a significant role in uniting the culturally disparate colonies in terms of ideas that ultimately would create a national consciousness. "By means of the written word, in books,

sermons, pamphlets, almanacs, magazines, and broadsides, the seminal ideas of the Enlightenment circulated in America with astonishing rapidity, facilitated largely by the printers of the colonial cities, for more than any other group they controlled the movement of ideas (Bridenbaugh, 1971b: 182-183)."

(3) Religious Transformation

A dramatic religious transformation towards spirituality, away from it, or to a new theological influence, is likely to lead to significant social change. Succeeding the Greek philosophers, and the Roman philosophers who adapted Greek philosophy to their situation, Christianity introduced the first significant change in philosophy, and society, to the western world.

"Jesus' teachings of the universal brotherhood of man under the fatherhood of God is quite different from the ethnic brotherhood of the city-state of Plato and Aristotle. As the Christian Church became increasingly powerful during the first four centuries of the present era, hierarchy, rituals, and rigid dogma were developed (Vine, 1967:9)."

Biblical ideas and thinking controlled society through the middle ages: God is the supreme ruler of mankind. His will is revealed through the Holy Scriptures. All institutions, political, financial, and educational, though necessary, are temporary, and derive their power and purpose from God. Scientific research, for the purpose of temporal improvement is unnecessary. Emphasis must

be on the next world, on behavior that will guarantee entry into Heaven.

In the fifteenth and sixteenth centuries the grip of religion on social behavior began to weaken. A struggle between church and state ensued. Nationalism evolved. The concept of a universal, all powerful church was challenged. The consensus created by Catholicism during the Middle Ages was disintegrating. Protestantism was born. Though salvation, and entry into the kingdom of God, were still prime goals, emphasis now was also on improving one's earthly stay. Man's interests turned to representative government, moneymaking, and science. Religion was modified by reason. A revolution in social thinking was underway. A work ethic was born.

Positing a relationship between religion and economic systems, Max Weber, in several of his works, theorizes that the religion of a society influences its economic systems, and subsequently its social goals and values. A transformation in religious thinking, he argues, leads to dramatic social change, which stimulates further religious modification.

In The Protestant Ethic and the Spirit of Capitalism, Weber (1930) hypothesizes that the birth of Protestantism, and the doctrines that accompanied it, provided much of the impetus for modern industrial capitalism - an economic system that would radically change Western civilization. Whereas medieval Catholic

views on earning a living stressed moderation, fair pricing and modest profit, and scorned the concept of usury, capitalism encouraged materialism, profit taking and wealth -- and the attitudes and means linked to these ideals. The ideal of unlimited earnings became a religious obligation (part of the process of fulfilling one's 'calling,' of glorifying God by the successful pursuit of a career or business) and a prime social mover.

In contrast to Weber who focuses on the relationship between specific religions and economic systems, Toynbee (1947) explores a much vaster spectrum. Seeking the the determinants of the rise and fall of civilizations, he concludes that religion is the most significant cause of all social change. Social change is a four part cycle, claims Toynbee. A society, or civilization, is born, it grows, it breaks down, and it disintegrates. Only our Western civilization has not yet disintegrated, claims Toynbee (though he sees it headed in that direction). Christianity is our only hope for staving off the disintegration of our culture. Christian faith, and the following of Christian principles, will postpone the ultimate social change -- the death of our civilization, believes Toynbee.

An argument can be made that Toynbee is subjective in his evaluation of societies and civilizations, that religious bias is evident in his work, that he selects historical data with the intent of supporting this bias, that he magnifies the spiritual

aspect of civilization and deliberately minimizes other aspects. Still, the fact that Toynbee's work has been, and is, extremely popular with the public (though not necessarily with historical scholars) indicates that even if religious transformation is not the major cause of social change, and social salvation, there are large numbers of people who believe that it is. We must therefore consider the fact that not only does religious change stimulate social change, but that belief in such interdependency injects religiosity and spirituality into a society.

(4) Political Transformation

The establishment of a new political order also produces change in a society. In the next chapter we'll talk about the interrelationship of political legislation and modernization. Of interest here is political transformation as a precipitator of social change, regardless of whether the social change results in modernization. Fidel Castro, for example, transformed the political structure of Cuba, and created great social upheaval, but many would question whether he modernized the country by so doing. Likewise, the imposition of martial law following a military coup often changes a social structure, but generally does not modernize it. Frequently socio-economic stagnation results.

Historically, and currently, there is a link between religious transformation, political transformation, and subsequent social change. The Massachusetts Bay colony, for example, was set

up as a theocracy designed to perpetuate the Puritan Ethic; and for a while it did just that. Biblical scriptures served as the foundation of Bay Colony law and behavior. Political and religious structures were intertwined. With church and state as a singular unit, Puritan values and norms were supported legally and religiously (Erikson, 1966).

Similarly, the Shah of Iran was forced out of political power by Shiite Moslems intent on repairing the division between church and state, on undermining the modernization process through the establishment of a theocracy and the strict enforcement of theocratic law.

Whether or not the social change that ensues from political transformation is desirable or undesirable depends on perspective. Indisputable, though, is that political change, and the law that accompanies it, is intimately related to social change. Says jurist James Coolidge Carter (1907:320), in discussing the relationship between law and life:

"Law, Custom, Conduct, Life - different names for almost (law assumes the application of governmental sanctions) the same thing - true names for different aspects of the same thing - are so inseparably blended together that one cannot even be thought of without the other. No improvement can be effected in one without improving the other, and no retrogression can take place in one without a corresponding decline in the other."

On the most fundamental level, political transformation influences social behavior by determining, or re-determining, the rules by which a culture will live. How will the society function? Will it be governed by 'Natural Law' ... by the laws of nature that command what 'ought' to be done and forbid the opposite ... by an assumption that man needs no imposed guidelines as he is bound by rationality and intelligence, by a non-political, universal law of justice? Probably not.

Except for isolated tribes, who use civil law means (based on liability through kinship) to deal with social conflict, political transformation generally involves the official imposition, on a society, of new governmental authority, prohibitions, and criminal sanctions. Most present day cultures look for justice, not just in nature, but in man-made ('Positive Law') law (sometimes fused with Divine Law). Ideally, such law recognizes that in an organized society, justice, and the well-being of the social order, are best served by just men enacting and enforcing just laws of human conduct in keeping with just principles in a just political organization (Abraham, 1986).

Realistically, Positive Law is often unjust, serving the needs and goals of those in positions of political and/or economic power. Chambliss (1964), analyzing the relationship between economic concerns and the development of vagrancy laws in twelfth century England, concludes that vagrancy laws, at that time in

history, served the interests of the landed aristocracy - a group that had immense political clout.

These laws , claims Chambliss, made travel, and the giving or receiving of charity, illegal during a period when commercialization was drawing serfs to urban areas and thinning the labor supply. Wealthy landowners needed an available and cheap source of labor, and through legislation controlling 'vagrants,' they would be likely to have this labor source. Such is an illustration of political enactments prompting social change by forcing a reversal of a migration trend. Although Chambliss' analysis has been the subject of considerable criticism, the importance of the law in influencing social movements has not.

Pomorski (1975), discussing the principle 'nullum crimen sine lege,' explains that you can't have crime without legal definitions of behavior. Depending on who holds political power, on what acts are labeled criminal by the passing of statutes outlawing them, and on whether such statutes are enforced, social change may or may not ensue from political transformation.

Vagrancy laws, which were used to provide cheap labor to the English aristocracy in the twelfth century, were less and less enforced as the labor supply grew and the politically powerful deemed these laws unnecessary. Wandering in search of employment opportunites and free handouts came to be regarded more as an annoyance than as a punishable offense. By the sixteenth century,

though, vagrancy laws were again enforced, in an attempt to accomodate newly emerging political players and effect social change of a different nature.

Vagrants became 'undesirables,' possible charges of the state and loiterers to be gotten rid of in order that that the growing middle and mercantile classes not be burdened or endangered by potential thieves and rabble rousers. The revived legislation was a means of cleaning up the community, of ridding it of social pests, of promoting cosmetic social change (Liska, 1987).

Political transformation encompasses not just the enactment and enforcement of new laws, but often the establishment of new categories of criminals, and new attitudes regarding these criminals. Becker (1963) contends that by the politically powerful labeling certain acts as crimes, and actors as criminal, we change not only those who are labeled, but our general social structure as well. We become a society of rehabilitative institutions -- drug centers, juvenile dentention facilities, hospitals for the mentally insane.

When groups of individuals are labeled as deviant or criminal, argues Becker, not only do they ultimately grow into that label, but a status culture is created, with different groups (e.g., prostitutes, alcoholics, migrant workers) occupying different positions in the status ladder. A public identity and awareness develops that aggravates social interaction, causes job

discrimination, incites racism. New social policy is then initiated in an attempt to mitigate the problem.

Political transformation can work for or against groups who occupy the lower and higher rungs of the social status ladder. Nonet & Selznick (1978), examine three types of political structure, and the social policy and law that spring from each. When a political structure moves from "Prebureaucratic" or "Bureaucratic" to "Postbureaucratic," contend Nonet & Selznick, society becomes better served, more mission-oriented and flexible. There is a diffusion of authority, with teams and task forces created to deal with changing problems and challenges. Multiple and temporary affiliations form to respond to, and resolve, dilemmas facing all social classes.

Stemming from the Postbureaucratic political structure is what Nonet & Selznick term "Responsive Law," as opposed to "Repressive Law," or "Autonomous Law." Responsive Law is idealistic. Its goal is to improve society with competent justice based on purpose, incentives, and the blending of legal and political aspirations with social advocacy. A Postbureaucratic political structure, and the Responsive Law that accompanies it, are generally costly, moneywise, and thus not easy to establish or maintain.

In an effort to deal with both the socially negative effects of political labeling, and the financial costs of a

Postbureaucratic, legally responsive political structure, various "de" movements have sprung up, and continue to emerge. These movements advocate, what they believe to be, constructive political and social policies, policies attempting to dismantle the harmful effects of excessive bureaucracy. Included here are agendas that are cost-effective, justice oriented, and individual-centered -- socially appealing reduction programs involving de-institutionalization, de-professionalization, de-criminalization, and de-urbanization (Cohen, 1987).

Espoused is social improvement through politically and legally supported community treatment resulting in rehabilitation and the removal of stigma. Intensive surveillance programs, small caseloads, 'I've-lived-through-it' role model counselors, and restitution workshops, are among the techniques used to 'habilitate,' as well as rehabilitate, social outcasts. It is difficult to measure how effective such techniques are, and which are most and least effective. Certain, though, is that these "de" techniques are widely urged by large segments of the people-saving professions who believe that most other political solutions to social problems have failed.

(5) Crisis

Whereas political transformation is a calculated stimulant of social change, crisis may be a calculated or uncalculated determinant. An unanticipated crisis arises, and a society may be

significantly, or permanently, changed. It may be changed for the better, or for the worse, or for the better in some ways, and the worse in others.

Volcanos, earthquakes, floods, hurricanes, locust plagues and other natural disasters are examples of environmental crises triggering social change. Events such as race riots, lootings, and killings can be classified as calculated crises capable of leading to social change.

Thomas (1937) regards crisis, natural or man-made, as the major force behind human existence. Environmental disaster, war, financial depression, or any planned crises that dramatically interrupt or cancel day-by-day social functioning, will significantly transform a society, says Thomas. In any society, a threat to its security is likely to produce a crisis situation. The more prolonged or profound the threat, the more severe the crisis, and the greater the likelihood of permanent social change both to the culture as a whole and to individuals within it.

Also, contends Thomas, historically there exists a correlation between crises and the appearance of cultural leaders. Given a crisis situation, judges, lawyers, scientists, and other kinds of opinion makers emerge to influence group behavior and destiny. Additionally, an initially small, seemingly random, incident or outbreak can develop into a social crisis and lead to significant social change, says Thomas. A current example of this

latter situation is the AIDS crisis now afflicting large numbers of Americans and promting change in sexual behavior, hiring regulations, legal procedures, and medical practices.

The concept of crisis as a precipitator of social change is not uniquely sociological. Freud posited on the connection between traumatic personal experience, mental illness, and family phychosis. When large numbers of afflicted individuals, or families, who have suffered the same traumas band together into special interest groups, overall social change is likely to result. We see this today with survivors of incest, and other sexual abuses, speaking out publicly, and through the legal process to deter such emotional and physical violence, enact social programs to assist victims, and bring substantial sanctions against perpetrators.

Unlike Freud, who looks at crisis from a psychological perspective, Toynbee (1947) views it as a stimulus-response, historical phenomenon. Civilizations go through growth and decline cycles. They are challenged by various crises, and depending upon how they repond, they will experience either positive or negative social change. A given civilization will survive and thrive, or disintegrate and disappear.

The Inevitability of Social Change

Assuming strong primary group control, and the absence of the above covered correlates of social transformation -- population

growth or shift, cultural diffusion, religious transformation, political transformation, and crisis, can a culture remain stationary? Is it possible for a society to stay in a continual state of equilibrium - sort of like the tribes tucked away in remote forests of the world?

Even assuming the absence of the major components of social transformation, the genetic nature of a population changes as older members die and new replacements are born. A temperamentally different culture emerges. If, theoretically, every single member of the current culture were to behave identically to his or her ancestors, perhaps the society would undergo no change. But such is not the human equation. Children, even in a static culture, are different from their parents, and respond differently to certain situations and individuals. As new individuals evolve, new ideas evolve, and social evolution is brought about (Comte, 1966).

Thomas (1937) contends that some degree of social disharmony is present in all societies at all times. Given strong primary group control and isolation, this disharmony will be kept to a minimum, and the process of social change will be prolonged, says Thomas, but it will occur. Rain forest tribes, for example, may appear to be in a constant state of social equilibrium, but if examined over a large enough time span, some social change will be evident. Of course, in conditions of weak primary group control, cultural diffusion, modernization, and environmental change,

social change is much more apparent, explains Thomas.

A major criticism of the Functionalist approach to social problems and social change is that it is ahistorical, says Tumin (1965). It doesn't study large enough time spans. It stresses the endurance of a social order due to a general agreement on values, goals, and behavior patterns; but it seldom examines the effectiveness of a consensual culture over time. In order to determine the "functionality" of a culture, argues Tumin, it is essential that time frame be incorporated into the analysis. If, for example, one wishes to idealize the primary group control and social equilibrium of a primitive rain forest culture, one must first explore the functioning of that consensual society over a prolonged period of its existence.

Spencer (1902), a Social Darwinist, argues that social change, though not necessarily discernible in small time periods, is inevitable because social structures can not remain static. They become more complex as man becomes more and more social. He doesn't really explain why, beyond the instinctual, men become more social; he just stresses that human evolution results from social adaption and interaction. In an unyielding process, conflicts arise between social groups, and the fittest groups survive.

Social institutions (economic, military, legal) develop as a result of such social adaptation, interaction, and conflict.

Change in one institution produces change, at varying rates of speed, in another.

Pareto (1963) does not see social institutions as prime factors in the evolutionary nature of society. Such institutions are an effect, more than a cause, of change, contends Pareto. He argues that the inevitability of social change can be linked to individuals, to the natural evolution of leaders who assert or lose power depending on their abilities to rule effectively, and on the passage of time.

Individuals and groups differ in intelligence, talent, and leadership ability, says Pareto; a society always will be composed of a superior governing elite, and inferior conservative masses who are ruled by this governing elite. However, the governing elite are continually being replaced within a time span of a few generations. This natural replacement of leaders, more than transformation in political policy, disturbs the equilibrium of society, making social change inevitable, explains Pareto. We may, for example, have a succession of Republican presidents, but each will possess a different personality and set of talents, and consequently inject new directions into the social order.

Social Change as an Indicator of Social Progress

Some theorists see social change as inseparable from social progress. Generally they acknowledge the existence of both social stability and social change, and argue that during periods of

social change, social progress results. One, however, must realize that 'progress' can depend strongly upon perception. Comte (1966) views progress in terms of inexorable intellectual and moral development. Though man can hasten or deter progress, he can not change its course. It is an automatic process in nature, claims Comte.

Spencer (1902) uses 'progress' and 'evolution' interchangeably. He, like Comte, is optimistic about social change. Society exists to produce happiness for the largest number of people. This happiness is effected through advances in a society's economic and political systems. A society, for example, moves from a hunting and farming economy to an industrial economy (Is this necessarily progress?). Advances are successive and evolutionary, leading to the creation and refinement of an ever-improving, integrated social structure.

Durkheim (1947), unlike Spencer, does not link happiness with changes in a culture's economic or political institutions. He questions social change as an indicator of social progress, and suggests that materialism and secularity do not necessarily provide a people greater happiness, and thus can not be considered progressive development. Tradition-based primitive societies, with little division of labor and no wealth, may be happier than modernized societies, stresses Durkheim.

Toynbee (1947) views social change as related both to social

progress and social failure. Influenced by Greek, Roman, and Chinese perceptions of change as enmeshed in vast historical cycles, Toynbee contends that civilizations arise, grow, decline, and die. The growth stage is the progressive stage; here social change is indicative of social progress. A society is presented with certain physical or social challenges. Assuming it responds positively to these challenges, growth and progress result. Should it respond negatively, disintegration and decay ensue.

When a society modernizes the resulting social change can be considered social advancement in terms of increased ease of living (e.g., development of roads, plumbing, education, communications, health care...). Again, though, whether or not modernization can be equated with progress depends upon perception. A culture may become more advanced economically. It may respond to challenges with scientific innovation. It may learn how to double the life span of its members. However, such developments denote progress only to those who see them as increasing the general welfare and providing greater happiness for greater numbers.

Many scholars view modernization as adversely affecting institutions such as the family and religion, and as increasing certain types of crimes, despite obvious social gains. Following chapters will cover the modernization aspect of social change, and the role of law as encouraging the positive aspects of modernization, and discouraging the negative ones.

Law as an Indicator of Social Perception

In addition to serving as a looking glass into the establishment of a culture (see page 19), law informs us about the development of that society. Beyond informing us as to the culture's legal foundations, and the major concerns of its founders, law clues us in to the society's growth and focus.

As a society evolves, laws emerge as a form of social control. New laws are enacted; old ones are repealed or modified; the institution of law changes. What doesn't change is the significance of law as an indicator of social change. Law provides insight into new concerns and awarenesses, into what certain segments of a population came to consider problematic, into the shifting values, goals, and fears of a developing culture.

If, for example, we examine the anti-counterfeiting legislation of colonial New York, we see an increasing interest in the concept of money, and credit, as opposed to barter. We see a culture determined to commercialize, and cognizant of the role of money in the commercialization process. We see a people fearful of having its currency debased, and its commercialization goals frustrated.

Whether or not counterfeiting was a serious problem in colonial New York is not nearly as important as the fact that increasing numbers of individuals came to believe that it was. They came to perceive of counterfeiting as a threat to

commercialization and to the colony, as endangering socio-economic survival; and consequently legislation was enacted that mirrored this perception. Throughout this study we will discuss the link between a society's priorities, perceptions, and laws. Particular emphasis will be placed on the relationship between modernization and legislation.

Conclusion - An Inextricable Connection

This chapter has focused on the tight, interactive linkage between social change and legal change. As a culture changes, the laws by which it is governed are modified in an attempt to ensure the smooth functioning of the transforming social order. Simultaneously, new laws are created to answer the needs and goals of the changing culture. Legal change is the outgrowth of social change, and social change is accomplished through legal change, through official directives and restraints implemented by those in positions of political power.

Law is the most formal method of social change involving the organized power of the state. Often, whether or not law is an effective agent of social change is not nearly as important as the fact that many people believe it does work or can work. Throughout history the belief has persisted that a culture can be enriched by the impartial administration of justice under law. The better the law, and the degree to which it is enforced, the greater its potency. Thus, a comprehensive discussion of social change, of any

sort, demands the inclusion of the role of law in that change.

It is not necessarily significant whether social change precedes legal change, or legal change precedes social change; but it is critical that one not be examined without the other, that conclusions not be drawn without analyzing the connection between the two processes. Any scholarly work which fails to include this important relationship is incomplete.

Louise Shelley has neglected to examine the relationship between social change and legal change in her theory linking modernization (a form of social change) and increased property crime. The omission of any discussion of law as a variable in the relationship she posits weakens her otherwise impressive research. Shelley's omission is the subject of this present study which focuses on the importance of the relationship between modernization and legislation in an economically developing culture facing a rise in property crime. The particular property crime examined in this study is counterfeiting, which is also a political crime. Because counterfeiting is, and was, considered both a property and political crime, legislation on it was readily obtainable and abundant.

As has been explained in this chapter, social change may precede or follow legal change, but a flow always exists between the two processes. Of enduring interest is the question, "Does

legal change work; are laws effective in tempering and/or influencing social transformation?" This question can only be answered by, "Yes, but...." It is a value judgment question whose answer depends on perspective. A law is 'good' or 'bad,' and social change is 'good' or 'bad,' in terms of subjective evaluation. Who is to decide if a given law is socially correct, if ensuing social change is socially desirable, or socially debilitating? One must examine whose interests are served, and whose may be compromised, by specific legislation and social transformation.

In terms of the relationship between social change and crime, it must be kept in mind that whether or not a given act is a crime depends upon the legal definition of that behavior. Acts which are acceptable in one social order, or context, may well be unacceptable in another. There are several correlates of social change (population shift, cultural diffusion, religious transformation, political transformation, crisis) that are likely to precipitate behavior which a new social order declares deviant and/or illegal.

Creative legal change has the power to check illegal behavior while concurrently fostering the needs and goals of the changing culture. To ignore the role of law in a changing culture is to assume that a society can not be the architect of its own destiny and that social change can not be controlled. To assume that crime

is related somehow to modernization, without considering the role of law, can lead to serious error.

CHAPTER II: MODERNIZATION AND LAW

Chapter I examined the interplay between social change and legal change. It focused on the phenomenon and the correlates of societal transformation in general. Little emphasis was given to the concept of modernization, which is a singular, and significant, aspect of social change. This chapter focuses specifically on modernization, and on the role of law and politics in the modernization process.

As used in this study, the term 'modernization' refers to: the gradual transformation of society through urbanization, commercialization, secularization, industrialization, law, science, and technology.

Generally, when we speak of modernization we talk about a shift from a predominantly agricultural, consensual, tradition-based culture to an industrial, heterogeneous, materially oriented society. However, the concept of modernization can not be so easily explained. It's an umbrella term containing interrelated components. At the very least there is a political component, an economic component, a social component, and a moral component. When we examine modernization, we examine structural change as the interaction of these components.

Modernization = Social Advancement?

Before analyzing the various components of modernization, and the role of law as a factor in the modernization process, it is important to understand that modernization is not always considered a positive event. Although many people equate modernization with social advancement or social progress, such perception really depends on personal perception. Modernization brings new awareness, new knowledge, new opportunities, and new comforts; but it also brings new problems. Some people believe these problems are substantial enough to offset the comparison between modernization and social progress.

We saw a glaring example of the negative perception of modernization a few years ago when the regime of the Shah of Iran was toppled by Islamic mullahs who believed that the religious foundation of Iranian culture was being destroyed by the

secularization, science, and materialism of a westernized leader.

Less glaring is the ever-present, modernization wary 'back-to-nature' movement advocated by groups concerned with preserving the institutions of family and religion, the health of the environment, and 'old-fashioned' values that conflict with some of the by-products of modernization. Though lacking the political power of the Islamic mullahs, back-to-nature groups are unimpressed by the positive aspects of modernization. They believe the social and individual costs are too high.

How modernization is perceived by those who hold political power is significant in determining the future of a given society. If a culture's leaders support the modernization process, laws and regulations will be enacted to encourage financial and scientific goals. Materialistic values will be touted. Education will stress the positive aspects of modernization. Inventors, entrepreneurs, and scientists will be lionized. Media attention, though acknowledging the negative accompaniments (e.g., increased property crime) of modernization, will center on the marvels of modernization and the means necessary to achieve and sustain these marvels.

If there is a shift in political power, and a culture's leaders no longer support the modernization process as advancing the society, or support only certain modernization efforts, we see a change in laws, values, and goals. A movement is begun to

reverse the effects of modernization, and halt any further moves in that direction. Such was the case in post-Shah Iran.

Most societies, historically and today, particularly newly emerging ones, want to modernize (in the sense of social advancement), and make moves in that direction. They are especially interested in economic development. They want to improve their quality of life, and ensure their survival. Yet, they are also concerned with minimizing the negative consequences of modernization, preventing the obstruction of their goals, and maintaining the positive aspects of their cultures. In an attempt to achieve advancement without adversity, social controls are usually introduced into a newly emerging culture. Prime among these controls is law.

Components of Modernization

Though a transitional process, modernization does not mean a transition toward any one societal structure. It may mean the evolution of a democratic, capitalist society; it may mean the rise of some kind of planned economy; or the fusion of a couple of types of political-economic models. It always means a change in a society's political, economic, social, and moral systems, and in the laws that govern these systems.

There are many paths to modernity, and many different types of modern societies. They all differ from traditional societies in their emphasis on the production and distribution of goods and services, on money as a means of exchange, on financial profit,

on maximizing efficiency, on rationality, on impersonal, utilitarian values and patterns in place of ceremony, ritual, and tradition. All modernizing cultures share an inevitable restructuring of their political, economic, social and moral systems. These systems may evolve at different rates, and in different sequences, under different historical conditions, but they always transform a primitive, or a premodern, community into a civilization; and, once civilization begins, the rate and nature of change are dramatically accelerated (Lauer, 1974).

Some theorists view the modernization aspect of social change as evolutionary, progressive, and irresistable. Others see it as cyclical, as involving historical stages and the rise and fall of civilizations. Still others view it as structural-functional, or as socio-psychological. Regardless of how it is evaluated in terms of direction or purpose, modernization must be analyzed in terms of its four interrelated, law-based systems or components.

(1) The Political Component.

The modernization process requires an increase in the power of the state, a growth in the capacity of a political system to manage public affairs and cope with controversy and conflict. Greater structural differentiation in government, and greater integration of all participating organizations and institutions, are necessary (Weber, 1969).

If a nation is to successfully modernize, argues Weber, it must be controlled by a "rational" (designed for optimal efficiency), political organization sustained by effective, enforced laws. These laws must be autonomous, substantive, rule-oriented, and incorporated into a bureaucratic organization.

Weber (1969) discusses modernization primarily as an economic process. Law and politics are regarded as a singular rational control mechanism that facilitate the development of modern capitalism. The relationship between law, politics and economic development is interactive. Law, and its political enforcement, guarantees economic interests; economic interests are the prime factors influencing the creation of law and a political commitment to its enforcement.

Weber's bureaucratic theory of economic development through law and political control is evolutionary. Change, with its good and bad consequences, proceeds in an irreversible direction. Collective rationality replaces individualism as a culture modernizes. A nation grows. It develops a financial presence. Some individuals benefit; others do not, but bureaucracy serves to mitigate class struggle and assist capitalistic goals.

Whereas Weber sees capitalistic goals achieved through a political bureaucracy run by laws and rules enacted in the interest of an expanding middle-class, Karl Marx (1964) views the various stages of modernization as predetermined, undermining

majority interests and needs, and intensifying class struggle.

Society evolves through ordained phases as a consequence of a mystic force, or "historical imperatives," contends Marx. Capitalism, driven by industrialization, is the nineteenth century phase. It solves production problems by providing material wealth sufficient to free men from bondage to nature. Rather than benefitting, society pulls itself apart because of class-based political struggle, which is unrelieved by bureaucracy. The rich capitalist class gets richer. The poor workers get poorer. Division of labor is not accompanied by division of benefits.

The modernization process, according to Marx, enslaves the masses. Law, like religion and science, is repressive, designed to serve the production and property interests of the governing capitalist class, and designed to subjugate the laboring class. The only solution to this negative evolutionary process is revolution.

A revolution that abolishes a political structure created to foster modernization for elite minority interests, will create an emancipated industrialized society that serves all interests equally. No private property. No hoarding of wealth. No classes. No state. The ideal modernized society, argues Marx, is humanistic, non-elitist, apolitical. Every man gives according to his ability and receives according to his needs. The agony of history comes to an end with a community of free individuals

working with the means of production in common - a goal which capitalists claim overestimates human nature.

Such an agenda, capitalists insist, is idealistic, paper perfect, but non-implementable. Like "Natural Law," which assumes that individuals are driven solely by rationality based on intelligence and morality (and thus not in need of man-made directives), it is a product of wishful thinking.

Marx, and many of his followers, disagree. They view capitalism, and the entire modernization process, as creating political conflict, and discouraging social unity. Some Marxists are more radical than others in denouncing the relationship between modernization and legalization as unethical. All claim that in a modernizing society political power ends up in the hands of those who own or operate the means of production.

The laboring masses become an exploited underclass. Any potentially constructive social advances resulting from modernization give greater power to the ruling class, and further devitalize and alienate the working class (e.g., industrial robots that increase capitalistic profits by decreasing the labor force).

Quinney (1974), a radical conflict theorist, claims laws are deliberately enacted to perpetuate the power and goals of the capitalistic class and criminalize working class behavior that threatens such power and goals. Laws that might control the excesses and abuses of the ruling classes, says Quinney, are on

the books, but are seldom enforced. When they are, penalties are minimal.

Substantial research, whether inspired by Marxism, cynicism, or just dramatic data, has shown that one cost of economic development is selective enforcement of laws. Like other favored industries, businesses contributing to the modernization of a society are subject to low level government enforcement of legislation aimed at curbing corporate abuses (Clinard, 1979).

Clinard (1979) documents the extensiveness of corporate crime, and the feeble level of government prosecution and punishment, in a study of enforcement actions taken against the 582 largest publicly owned American corporations. Most enforcement actions did not involve criminal procedures. When they did, rarely was a convicted executive imprisoned. When incarceration was used as a sanction, sentences ranged from one to six months. Fines, when imposed, amounted to only a tiny portion of the profits garnered as a result of violating the laws that led to the fines.

Also examining the role of class interests in the relationship between modernization and law is Jerome Hall. Hall (1935) sees the eighteenth century as the stage of economic and political growth that produced the foundation of contemporary law on theft and fraud. Law is viewed as serving the elite business interests that profit from modernization. Prior to the 15th century, says Hall, when political structures were feudalistic,

closed agricultural economies, the transportation of goods was not a major concern. No substantive, criminal laws existed governing the ownership, management and transportation of property. Such laws evolved as a commercial class evolved, as the modernization process was kicked off.

The commercial revolution in Europe, explains Hall, ultimately led to the development of a politically powerful economic class determined to safeguard trade through the implementation of new laws regulating the handling of property while in transit. Before the commercial revolution, fraud between private individuals was not punishable by criminal law, or easily remedied through civil action. The prevailing attitude was let the buyer exert common prudence (caveat emptor!). There was no notion of the development of a state being endangered by one individual deceitfully obtaining goods from another.

In addition to creating a need for enforced legislation deterring the theft of transportable goods, modernization creates a need for effective laws deterring the theft of funds. Commercialization leads to the development of financial institutions and instruments; and these institutions and instruments must be protected. "(G)rowth in banking and the use of paper currency and instruments of credit affected the law of theft in several important respects," says Hall (1935:27). "The effect upon the law of embezzlement was direct and sharply marked."

Similarly, "...it became necessary to safeguard merchants against an extension of credit upon misrepresentations (1935:32)."

As a nation modernizes and politicizes, the complexity of the laws against theft and fraud increases, says Hall. Speaking of eighteenth century England, he claims, "Enactments dealing with theft were much more numerous than any others...There were so many types of property of special value, and so many places where thefts could be committed, some of which were regarded as more serious than others, that numerous statutes seemed necessary (1935:73)."

Hall believes that the property crimes which accompany modernization can be controlled by narrowing the traditionally too inclusive legal categories to specific behaviors (e.g., car theft, embezzlement, pocket-picking), persons, and places. He argues for intensive subdivision, for what he calls "divide and conquer legislation (1935:xv)." Though he advocates specific, substantive, codified criminal law, he does not go into how such law should be crafted for maximum effectiveness (what, for example, might be an effective vs. ineffective law on car theft?).

Looking at the history of American law, Lawrence Friedman (1973) also focuses strongly on the relationship between modernization and legalization. He sees explanations for legal change in America's changing political, economic, and social patterns and goals. The American colonies, contends Friedman,

developed their own individual legal systems based on English common law, the local traditions they took with them from Europe, and the current conditions which confronted them in the New World.

American government began with simple, undifferentiated court structures, and developed more complex ones as the modernization process took hold. Initially there was no judicial hierarchy or division of powers. In the seventeenth century the same people made laws, enforced them, decided cases, and ran the colony. Executive, legislative, and judicial power were not clearly delineated. The distant English king held some nominal authority.

County courts, manned by justices of the peace, were at the heart of colonial government. They dealt with issues such as tax collection, Indian relations, military protection, constables, charges for repair of bridges, creation of highways, care of the poor, fines, punishments, and probate affairs. Colonial legislatures heard appeals, but conducted few or no trials. The Privy Council of London struck down unacceptable colonial laws which contradicted British interests.

By the eighteenth century, says Friedman, there was a pyramid of courts in the American colonies. At the top of the pyramid was the Governor of the colony and his council. Beneath the Governor and his council were appellate courts, original jurisdictional courts, and local justices of the peace. Courts were set up to handle specific problems experienced by the modernizing colonies.

Admiralty courts handled violations of trade and navigation laws. Chancery courts dealt with equity, guardianships, wills, and land disputes. Oyer and Terminer and General Gaol Delivery were roving courts that heard and determined criminal cases held over in the local community to await the coming of the court. Still, despite a growing differentiation in court structure, jurisdictional lines were still fuzzy and overlapping in eighteenth and nineteenth century America. Also, to 'appeal' often meant to retry (in another court), not to review specific issues.

Talking about the development of law within the evolving political framework, Friedman (1973: 78) asserts that, "Any fresh start requires codification...The common law seems too shapeless, too complex." Modernization, claims Friedman, can not occur without codification. Common law alone is too slow and impotent to effect the kind of significant legal change that facilitates a transition from an undeveloped to a modern economy. It must be combined with statutes that deal with quantitative matters or rules (e.g., the creation of currency, taxes to be levied for highway building, the number of constables to be elected to a district).

In the specific case of the American colonies, says Friedman, custom, case law, and statutory law spread from colony to colony. Travelers and word-of-mouth extended knowledge of the living law, and in so doing set the stage for federalism. The

concept of federalism in America, like nationalism in general, is usually a byproduct of modernization. Some form of strong, centralized government, be it democratic or authoritarian, is essential for the modernization process to succeed. Large scale political intervention sets the stage for economic development and the institutions that facilitate it. Conflict between diverse social orders and interest groups must be regulated by rules and laws constructed by various organizations and by the State (LaPalombara, 1963).

"Modernization brings changes in the polity...," explains Lauer (1974:219). "Local interests and loyalties give way to some extent to nationalism. The economy itself demands this shift insofar as it requires an extensive market and modern methods of communication and transportation. Local isolation and purely parochial interests contravene large-scale economic development."

As a society modernizes, its political structure is forced to change. Though by no means equalized, political power becomes more widely distributed; more individuals participate in one or another aspect of the political process. Lawmakers with local accountabilites professionalize and become specialists in various kinds of law. With increased participation and specialization in the political process, law becomes more statutory.

Customary law is replaced by statute law as modernization proceeds, claims Galanter (1966). Modern law consists of rules

that are uniform (for all religions, classes, etc.). It is transactional (based on contracts and obligations), hierarchical (division of power, differentiation in the criminal justice system), bureaucratic (impersonal, rule-bound, written), rational (function-oriented), run by professionals, amendable, and secular (Galanter, 1966). Also analyzing the fluid political component of modernization, and its effect on the nature of law, are Nonet and Selznick (1978). Like Galanter, they see law as becoming more statutory as a society moves from a prebureaucratic to a bureaucratic political structure. Rules which are crude and weakly binding become "Codified; blueprints for action (1978:22)."

Nonet and Selznick divide law into three classifications --repressive, autonomous, and responsive. Each of these types of law is equated with a type of formal organization. Repressive law is most typical of a pre-bureaucratic organization; autonomous law of a bureaucratic organization; and responsive law of a post-bureaucratic organization.

It is important when reading Nonet and Selznick to bear in mind that their categorizations are non-exclusive, generalized, and idealized. A prebureaucratic organization, for example, may allow for responsive law under certain circumstances. A postbureaucratic organization may have elements of repressive law. A bureaucratic organization can contain aspects of both repressive and responsive law. Additionally, whether or not law is

repressive, autonomous, responsive, or a combination, involves 'eye-of-the-beholder' perception. However, Nonet and Selznick's breakdown does provide a clear capsule analysis of the changing relationship between politics and law as a society evolves through the modernization process.

When a society modernizes from a prebureaucratic to a bureaucratic structure a separation of law and politics follows, say Nonet and Selznick. Law is no longer subordinated to power politics. "(It) is elevated 'above' politics;...In interpreting and applying the law jurists are to be objective spokesmen for historically established principles, passive dispensers of a received, impersonal justice."

Under judicial guidance, law may change or adapt, but, with the bureaucratic structure comes an autonomous law which "...insists on a sharp distinction between legislation and adjudication... Anything that smacks of judicial legislation is repugnant to the ethos of autonomous law and a threat to its authority." However, though it tames repression, autonomous law still "...remains committed to the idea that law is mainly an instrument of social control (1978: 57-63)."

Responsive law, which Nonet and Selznick view as a goal more than a reality, is not committed to the idea that law is mainly an instrument of social control. Associated with a postbureaucratic stage of organizational development, responsive law is envisioned as mission-oriented and flexible, subordinated to principle and

policy, unconcerned with rule-boundedness, participatory and problem-centered. It is the outcome of autonomous law. "The long-term effect (of autonomous law)," claim Nonet and Selznick, "is to build into the legal order a dynamic of change, and to generate expectations that law respond flexibly to new problems and demands. A vision emerges, and the possibility is sensed, of a responsive legal order, more open to social influence (vs. social control) and more effective in dealing with social problems (1978: 72)."

Nonet and Selznick view responsive law as a "precarious ideal" in a modernizing state. They are aware of its limitations (e.g., responsive law can weaken respect for procedural forms and rules, causing law to lose its capacity, in emergency and other situations, to restrain officials and command obedience). Nevertheless, they see it as representing "...a 'higher' stage of legal evolution than autonomous and repressive law (1978: 116)."

Unlike repressive or autonomous law, responsive law unites law and government, but in the best interests of a modernizing social order. "The hallmark of repressive law," argue Nonet and Selznick, "is passive, opportunistic adaptation of legal institutions to the social and political environment. Autonomous law is a reaction against that indiscriminate openness. Its overriding preoccupation is the preservation of institutional integrity...which accepts a blind formalism as the price of (that)

integrity." Responsive law "strives to resolve that tension" by "responsible," "discriminate," and "selective" adaptation to a changing environment (1978: 76-77)."

In a responsive legal order, law and government integrate to enlarge "the meaning and reach of legal values from a set of minimal restrictions to a source of affirmative responsibilities (Nonet, 1978: 117)." Risk is inherent in this political structure; but there is also the possibility that the legal order can compensate for this risk by more effectively tapping the resources of the social order. Thus, there could arise an inclusive political community that stands a solid shot at making modernization work for the masses.

(2) The Economic Component.

Materialism is the heart of modernity. It pumps the passions of a people to acquire, produce, learn, invest, and plan. It exerts a magnetic attraction on vastly different cultures. Much scholarship has been devoted to why one culture is more materialistic than another, to why one civilization moves towards modernization while another does not. Certainly not the only answer, but a major one, is socio-economic environment. Basic value orientation works within a particular form of social crganization to maximize economic possibilities and transport a civilization through progressive stages of financial growth.

Modernization, like social change in general, is determined

by factors ranging from population growth to environmental conditions (see Chapter I). However, critical to successful modernization are economic prerequisites controlled by a legal system intent on encouraging some economic activities and discouraging others.

In his essay, "The Historical Experience on the Basic Conditions of Economic Progress," Habakkuk (1968) discusses how the socio-economic environment of England was significant in determining that country's modernization. Urbanization was occurring; growing numbers of individuals were becoming less interested in agriculture and more interested in commercial production and industrialization. The political structure endorsed acts favoring mercantilistic goals. Overseas trade was assisted by the nation's favorable geographic location. The market available to British manufacturers was large and eager. Transportation costs were relatively low. Internal tariffs and tolls were non-existent.

Polanyi (1944), analyzing economic evolution in a global social context, stresses the importance of private property, surplus production, capital investment, supply and demand marketing, and profit and loss in the creation of a modernized state. Economic markets exist in primitive and premodern cultures, and always have, explains Polanyi, but not as impersonal financial mechanisms based on the profit motive. Emphasis in a non-modern market society may be on the exchange of gifts, or on reciprocity,

but it is not on money hoarding, maximizing efficiency, or accelerating national growth. No public policies or legislation exist to foster the creation of a modern state. Non-modern markets are essentially tradition-driven, barter-based social events.

Bruchey (1966) presents several seventeenth and eighteenth century essays which underscore the tension between a colonial America on the verge of modernization and a political-religious leadership hopeful of squashing increasing secularization. We see the futile legal attempts made to regulate and restrict business practices, prices, and wages against increasing materialism and various forms of profiteering.

Despite the earnest efforts of colonial American leaders and visionaries, materialism would trample anti-profiteering legislation, and lead to the demise of doctrines and laws supporting 'just price' (pricing based on moral, not marketplace considerations), and prohibiting tactics such as 'engrossment' (the prevention of fair-price sales by deliberate hoarding) and 'forestalling' (manipulating the price of goods, in order to create artificial shortages).

Though seen by some idealists and lawmakers as a sign of societal degeneration, American modernization was continuous. Despite laws enacted to promote a collective conscience and restrict attempts at entrepreneurship, too many preconditions existed to support moneymaking goals. On the most fundamental

level, explains Friedman (1973), labor was scarce in the New World, living conditions were tough, and skilled laborers, intent on surviving, were inclined to charge what they could get for their services - not what some governing body deemed proper.

Modern economic theories offer several differing frameworks for a story of financial growth and fluctuation (e.g., free market, regulated market, collective ownership of means of production). Adam Smith, Keynes, Marx and others disagree as to the ideal method of socio-economic development. However, all economic theorists believe in the concept of preconditions for modernization, be these conditions orchestrated by men, accidental natural events, or predetermined by some larger mystic force (as Marx suggests).

Focusing on the preconditions for economic "take-off" is W.W. Rostow (1962). Recognizing that causal or interactive relationships are not always clear (e.g., must social values change for modernization to proceed, or when incentives for modernization are offered to people, are attitudes then changed?), Rostow first talks about "propensities," tendencies in the air which may result in economic advance, but need not be motivated by economic goals. At certain times in history there arises a propensity to accept innovation, or to develop science and technology, or to have more or less children. When these propensities combine with certain objective circumstances there

occurs a "take-off" into self sustained growth, claims Rostow.

In terms of "objective circumstances," Rostow's "Take-Off" theory posits that in addition to cultural "propensities," certain structural preconditions precede a "take-off." Important, says Rostow (1962: 10-20), is the "scale and productivity" of the society's work force, the industrial framework of the society, the availability of capital, a combined social, economic, and political structure supportive of growth policies (e.g., rise of a middle-class, educational opportunities, banking institutions, democracy, civil services, entrepreneurial incentives).

Economic growth, explains Rostow, centers on a relatively brief time interval of two or three decades when the economy, and the society of which it is a part, transform themselves in such ways that such growth is more or less automatic. The take-off is that interval when investment increases in a way that real output per capita rises, when radical changes occur in production techniques, when profits are put back into further production (1962: 274).

Such take-off requires a "build-up of social overhead capital, claims Rostow (1962: 313)," (i.e., land, natural resources, scientific-technical-organizational knowledge), a technological revolution in agriculture, and a society prepared to respond actively to new possibilities for productive enterprise. It is also likely to require political and institutional changes,

says Rostow. However, he does not go into the specifics of such changes. Largely ignored, for example, is the role of law in stimulating "take-off."

Thompson (1973) goes a little more into the specifics of the political and institutional changes necessary for modernization than does Rostow. Political structure, and the institution of law, for example, are seen as major factors underlying economic change before and during the Industrial Revolution. "The first influence of the growth of European commerce was...the creation of a substantial minority who were completely dependent upon commercial exchange for their livelihood, and who developed appropriate institutions for this commercial life...It would be foolish to suppose that economic progress did not challenge values, institutions, and attitudes which were based on a stagnant economy...Political life was...altering under the pressure of new economic forces. Minority groups had won freedom from rampant economic exploitation for the benefit of the old aristocracy. In England it had become politically impossible to impose arbitrary and crushing taxation upon new economic classes as a means of preventing a challenge to the economic supremacy of the old order (1973: 34-36)."

In examining the circumstances necessary for commercialization and industrialization (a stage of modernization which often follows commercialization), Thompson comes up with

many of the same preconditions as Rostow, but stresses the need for caution in discussing economic growth in terms of time intervals. "Rates of growth in themselves can be misleading," says Thompson, "because it is easy to get high rates of growth in the initial stages when industry (or whatever is being measured) is small. Although its rate of growth may be high its size makes it insignificant (1973: 28)."

In Economic Analysis of Law Posner (1986) looks at the nature and speed of economic development as intricately related to legal structure. Unlike Bruchey and Thompson who examine the ineffectiveness of anti-modernization legislation in a society posititioned to prosper financially, Posner discusses law as a mechanism for assisting modernization goals.

Like Weber (1969), Posner believes that the modernization process requires an increase in the power of the state, and a political organization sustained by effective, enforced laws. Much of his attention, though, is centered on the relationship between criminal law and economic development, on criminal law as a restraint on behavior that can obstruct a nation's financial growth. In this context a distinction is drawn between the legal concept of "reasonable man" and the economic concept of "rational man" inclined to engage in criminal acts (1988: 10).

Reasonable man, says Posner, behaves in a reasonable, prudent manner. He acts with fair regard for the welfare of others.

Rational man seeks to maximize his own self-interest, and has only limited concern for the well-being of others. His self-centered drive can produce outcomes in conflict with overall societal interests and goals. Such behavior can be controlled to some extent by criminal laws.

According to Posner (1988: 252-253), "A country's criminal law reflects and also determines governmental roles or objectives in curbing crime." American criminal law, he contends, is founded upon the basic premise that crimes are acts which cause harm and can be responded to by prosecution and punishment. Usually the criminal must have had a choice between action and inaction, and have chosen to act in a socially harmful way.

Often, stresses Posner, the criminal act has an economic rationale. Key issues are not so much whether the government can control the crime which interferes with economic goals, but how far the law should go, how severe penalties should be in the hope of deterring others, and how the law should be enforced.

(3) The Social Component.

The political and economic components of modernization have to do with how a government and an economy are structured and oriented, positioned and conditioned, to facilitate or frustrate materialistic motives. In a modernizing society law is directly related to politics and economics in terms of empowerment. Legal

control gives legitimacy to government, and protects or prevents commercial, industrial, and/or technological expansion. Law, however, is related to more than our political and economic structures.

Whereas law is directly and obviously related to political and economic structure in a modernizing society, it is more subtly related to social structure. When we look at how a culture is structured socially our focus is on issues such as how various social groups live, work, worship, educate their population, treat women and children. The social component of modernization has to do with values, attitudes, living conditions, interpersonal relationships, which may be influenced by law (or which may influence law), but which also function independent of legal controls.

Courts are governed by procedural rules. Trade is governed by tariffs, tolls, cargo restrictions, etc. Individuals, are governed by emotions, feelings, and sensitivities, as well as by laws. Criminal laws, civil laws, administrative laws, industry rules and regulations, all affect social, as well as financial profit and loss; but basically they are quantitative, autonomous, and anonymous in nature. They are the formal framework, not the soul and spirit of societal development.

As a society modernizes some cultural institutions (e.g., the extended family, sabbath obervance, barter) may diminish or

disappear and others may be expanded (e.g., education, banking, postal services). Institutions change, claim nineteenth as well as twentieth century social observers, because individuals, and the conditions under which they exist change. What is often disputed is the degree to which change can be orchestrated by human intervention, and whether or not social development is necessarily a positive occurrence.

Social maturation is natural, automatic, and progressive, posits Spencer (1902). It can not be orchestrated by legislation or other forms of human intervention. Spencer's contentions sound convincing and appealing; but it is difficult to locate their basis of proof. A universally acceptable cause of social change does not surface. Though he describes concurrent and consecutive social processes in a modernizing culture, Spencer does not establish a direct causal link.

The causal factors of social change in a modernizing society still remain elusive. Nevertheless, social change does accompany modernization, and, as Spencer and others correctly point out, segmental rates of social change are uneven in a culture experiencing economic growth. Development in one segment of society, or in one area of life, or in one institution, is accompanied by change in other areas of life, or in other institutions -- but the rates of such change differ causing an unbalance in a social order (e.g., the law is continually

struggling to keep pace with the 'corporatizing' of America).

Unlike Spencer, Coleman (1982) does not view social development as natural, automatic, or progressive, but rather as capable of being manipulated by law, and capable of rendering individuals irrelevant. "(T)he law has facilitated, and technological developments have motivated, an enormous growth of a new kind of person in society, a person not like you and me, but one which can and does act, and one whose actions have extensive consequences for natural persons like you and me (1982: 41)."

In The Asymmetric Society, Coleman discusses the social component of modernization in terms of the creation of a new 'legal person' (the corporation) who interacts with 'natural persons.' "A structural change (has occurred) in society over the past hundred years in which corporate actors play an increasing role and natural persons play a decreasing role," says Coleman. "In the earlier structure of societies, the family was the nucleus of the corporate structure, and the component elements of the family were natural persons... But the conception of the corporation as a legal person distict from natural person...made possible a radically different kind of social structure than before...The emergence of this new structure for society has had and continues to have extensive consequences for the lives of the natural person within it...(1982: 44-46)."

The most compelling consequence, according to Coleman, is an

asymmetric society - a social order where, in addition to people interacting with people, and corporations interacting with corporations, individuals are forced to interact with corporations. This asymmetric relationship "...has come to proliferate throughout the social strucure" with devastating results for individual (as opposed to corporate) actors because "...the corporate actor is very large in resources, compared to the person on the other side of the relation...(Thus) the corporate actor nearly always controls most of the conditions surrounding the relation (1982: 48)."

Additionally, stresses Coleman, even individuals representing the corporate actor become victims of the 'corporatizing' of America. Explaining the "irrelevance of persons" in a capitalistic society, he contends that, "Persons have become, in a sense that was never before true, incidental to a large fraction of the productive activity in society. This is most evident when the person who occupies a position in a corporate actor is replaced not by another person but by a machine." Compounding this problem, industrialization creates a social structure that functions independent of particular persons and consists "only of positions," making "the transition from one manager to the next unnoticeable," thus creating dehumanization and despair in our modernized society (1982: 49-50).

Looking at urbanization and commercialization (stages of

modernization that usually precede industrialization), in colonial America, Bridenbaugh (1971a) sees some seeds of despair, but he mainly sees the societal optimism that accompanies new beginnings. Focusing on the birth and early growth of five major American cities (Boston, New York, Philadelphia, Newport, and Charleston), he explains that he is concentrating on a period in American history (17th-18th centuries) when the local tavern and church were the most important social institutions, when a middle-class was forming and multiplying, and when industrialization and the corporate structure that evolved from it were decades down the road.

During this period individuals were intent on surviving and thriving in a New World. They were interested in whatever helped them toward this end. Government and law, though rudimentary by later standards, were viewed as essential to the social welfare. "(S)ome form of local government to meet the special needs of village populations was established in every settlement except Charles Town. Originally what powers of government the colonists possessed inhered in the provincial governments, and authority for dealing with local situations had to be coaxed or wrung from governors, proprietors or assemblies. The ability of each village to cope with its own particular problems depended to a considerable extent upon the measure of self-government accorded it. Police powers and the right of taxation were vital to the

solution of incipient urban problems (1971a: 6-7)."

In Cities in the Wilderness (1971a) Bridenbaugh gives a lot of attention to the socio-economic component of the earliest stages of modernization. Discussed is how the settlers constructed their homes, laid out streets, dealt with drainage, built bridges and highways, erected docks to accomodate ocean commerce, created a market economy, and ran the industries (e.g., shipbuilding, breweries, bakeries, tanneries) that were spawned by the development of trade. The social and economic components of commercialization are described as indistinguishable from each other.

"Pursuit of trade and commerce was the all-embracing activity of the early colonial villages - the very basis for their existence," says Bridenbaugh. "The colonial town was primarily a commercial community with its daily exchange of goods, - a community of market places, warehouses, wharves and shops (1971a: 26)." As commerce became more and more established in the seaport towns, the social ideals, principles, and laws which initially guided it became less and less followed. Inherited institutions became adjusted to the problems and opportunities of a New World society.

"Certain economic ideals of medieval England came with the colonists to America. These included the beliefs that the prime function of merchant, craftsman, artisan and laborer was the

service of the community, and that careful and minute regulation of all phases of commercial life was the proper responsibility of municipal authority. Hence municipal provision for a 'fair customary price' for goods and labor, for wares of a standard quality, for strict supervision of food supply and regulation of weights and measures, for payment of debts when due, and for protection of the community's trade by the exclusion of strangers and interlopers, - all these were medieval legacies to America (1971a: 45)." Well before 1700 some of these medieval legacies were discarded; and some were retained and modified.

As colonial America continued to develop, says Bridenbaugh, legislation of one form or another was enacted in an attempt to deal with the appearance of urban problems. To protect the health of villagers, for example, sanitary regulations were passed by village authorities. (A 1657 New Amsterdam ordinance provided for the disposal of refuse at five specified places only.) To protect against alcoholism and vice resulting from disreputable taverns liquor laws were passed. "The wholesome quality of (New York's) taverns," claims Bridenbaugh (1971a: 273), "was the result of careful and continuous enforcement of the liquor laws." To protect against illiteracy various educational requirements were mandated. Says Bridenbaugh (1971a: 288), "At New York nearly every indenture called for some measure of instruction in reading and writing, and generally where such provisions were omitted the apprentice seems

already to have received an elementary education.

Discussing, not urban problems, but the problem of urbanization, is Lauer (1974: 223-224) who contends that "...the relationship between urbanization and modernization is not a simple one." Urbanization can increase literacy, education, and the potential for social mobility, encourage the growth of a mass media, stimulate political awarenss, and facilitate economic development. Individuals have opportunities that they would not have in a rural society. However, stresses Lauer, "...under certain circumstances (urbanization) can impede economic development also..."

"The latter occurs when urbanization proceeds too rapidly, creating serious economic, political, and social problems that divert time, energy , and resources away from development. A number of nations face these problems of overurbanization...The important questions, therefore, include the optimum rate of urbanization, and the precise way in which urbanism facilitates modernization (and impedes it), and the consequences of urbanization for people's lives...For in addition to its role in the modernization process, urbanization has often been linked with the creation of anomie and alienation among people."

For urbanization and modernization to be socially constructive, claims Galanter (1966), the laws governing economic development must be modernized. Legislation must be enacted that

takes into account the negative, as well as the positive, results of societal transition, the needs as well as the obligations of a newly emerging social order. Anomie, alienation, and other socially negative effects of urbanization and overurbanization can not be eradicated by laws, but carefully developed urban policies can relieve such effects.

Focusing on law enforcement, and examining the limits of law in changing social attitudes and values in America, is Price (1985), who argues that despite equal employment legislation barring sexual discrimination in public sector employment, women in our modernized culture are still only minimally represented in advanced policing positions. This has nothing to do with ability, skill, or the usefulness of females in law enforcement. Rather, says Price, it has to do with social perceptions, which are not easily changed. Police organizations, and the public, perceive of policing as a male occupation and are reluctant to alter their views, regardless of abundant evidence underscoring the importance of sexual integration in American law enforcement.

Whereas Price looks at the limits of law in changing social attitudes and values in modern American society, Leo (1991: 28) looks at how social attitudes and values in our modern society allow for the creation of dangerous laws. In "Cozy Little Homicides," he addresses the issue of euthanasia, and the empowering of doctors as "agents of death." Referring to

'Initiative 119', a euthanasia proposition on the November, 1991 ballot in Washington State, Leo focuses on the poor wording of the euthanasia bill, on the statutory fuzziness of its stipulations, on how ineffective the legislation would be in thwarting medical abuse. This bill was defeated, but the fact that it was presented, and that it had considerable support, tells us something about how some segments of American society regard serious social concerns of illness, aging, life and death in the 1990s - how willing some of us are to legally empower physicians to decide who lives and who dies. Here we're talking about extremes that may or may not come to pass. Yet, in a modernizing society certain individuals do effect social change in significant ways.

Though it may be inevitable (as Spencer insists), or cyclical (as Toynbee claims), or mystically preordained (as Marx implies), social development is also a function of individual personalities that emerge from a specific social structure. Looking at the broad sweep of history this may not seem to be true. One can make the argument that impersonal forces shape human destiny and determine the social structure of a people. But, in terms of the limited time period in which we live on this earth, it appears as though certain individuals ("Great Man" Theory) have given a particular modernizing spin to society.

In the past decade, for example, several computer entrepreneurs have changed the way we access, transmit, and

process information. Advances in electronic technology have changed how we bank, how we cook, how we worship, how we treat physical injuries, how we fight wars...This may all be inevitable, preordained or cyclical, but from the minute perspective of an insignificant human speck in our vast indifferent cosmos, we have moved into the electronic age because of the input or inventions of creative personalities, as well as because of more obscure or esoteric forces.

According to social-psychological theories, the role of a particular individual and his personality in modernization is significant. Men and women have much latitude in shaping the direction of social development, in rattling tradition and political authoritarianism, in stimulating legal action. We are not pawns of forces beyond our control or understanding.

Just as scientific, historical, or philosophical principles can be incorporated into theories of modernization, so too can psychological principles relating to the creative personality or the achievement-oriented leader. However, as with all attempts to explain economic development or modernization, caution must be exerted in claiming causation. "(T)he precise relationships between social structure, culture, and the individual have not yet been fully clarified (Lauer, 1974: 92)."

(4) The Moral Component.

The moral component of modernization has a lot to do with

priorities in a secular society. Large numbers of individuals violate traditional norms or laws in a society where life is becoming organized around a wide variety of impersonal and utilitarian values, where a common core of shared values and norms is disintegrating, where priorities are no longer clear.

Increasing secularization, along with several other elements in the modernization process, leads from a single value system toward pluralism in priorities. Pluralism is likely to erode the moral foundation of an integrated society. Priorities that were once firmly entrenched begin to shift; with this shifting comes moral compromise.

Moral compromise is likely to arise in a modernizing society when an individual must decide whether to follow the ethical precepts upon which s/he was raised, or the ethics of his trade, profession, or company, which often conflict with the precepts upon which he was raised. Should he decide to follow the latter, and should his behavior, though in keeping with the standards of his trade, profession, or company, violate a punishable legislative act, he may become subject to criminal charges and sanctions (Pomorski, 1975).

Several of the theories that attempt to explain criminal behavior draw a connection between modernization and the resolution of moral conflict. Sutherland's theory of "Differential Association," which is one of the most influential theories of

deviant socialization in contemporary society, explains the social-psychological processes that determine deviance and criminality. Basically, Sutherland argues that deviant behavior is learned through frequent, intense, social association with intimate personal groups who approve of norm violations. A person becomes deviant or criminal because s/he incorporates into her/his moral being an excess of definitions favorable to norm or law violation. Unfavorable definitions are discarded as the magnitude of deviant associations (relative to conventional associations) increases (Sutherland and Cressey, 1970).

Several cultural conflict theories (e.g., subcultural deviance, operant conditioning) have extended or revised Sutherland's Differential Association theory, but always stressed is that in a modernizing society primary bonds are weakened, and traditional moral values are vulnerable (Liska, 1987).

Like morality, which is vulnerable in a modernizing culture, religion undergoes change. Modernization pushes religion, and its moral premises, to the edge of societal existence. Religion may or may not decline in a given culture, but religious control weakens. Religion may continue to function as a source of intellectual justification for man's morality. It may provide psychological support during times of crisis. It may alleviate the fear of death. However, it ceases to function as the core of a culture.

Weber (1930) contends that once a society is modernized,

religion, which may have assisted human development, and which may have been its driving force, loses its utility. Protestantism, says Weber (lamenting the substitution of rationalization for mysticism in secularized, modernized cultures) facilitated the rise of capitalism, but now that capitalism is firmly established, and mechanically operative, religion is no longer necessary. Sadly, stresses Weber (1969), the side effects of decreased religiosity, and entrenched capitalism, are often alienation, loneliness, and anomie -- negative social conditions capable of weakening the moral fabric of a modernized society.

Given a decline in the power of religion in modernized western society, and a subsequent decrease in the influence of religion on human morality, there are those who propose to institutionalize, or customize, morality. In Strategic Intervention in Organizations: Resolving Ethical Dilemmas, 1988, Mathews addresses legal and ethical issues confronting American corporations and corporate employees. Agreeing with Sutherland's 'Differential Association' theory that the most powerful influence on human behavior is the immediate social context from which an individual acquires views of what is acceptable and unacceptable, legal and illegal, she maintains that employee white-collar crime is defined by the standards of one's reference group.

"Differential association-reinforcement provides an elegant theory to analyze and interpret illegal behavior within

corporations and the corporate cultures that help to produce and reinforce procriminal behavior patterns," says Mathews (1988: 39). If, for example, everyone at work browses through the company's confidential files, pads her/his expense account, overstates client services, or engages in time theft, there is little, if any, perception of immorality or illegality. What then can be done about illegal or unethical peer group practices?

Mathews proposes a program of customized, written, enforced codes of ethics for all corporate employees - detailed moral guidelines that would exist not just in pro forma handout manuals, but in daily practice. Thus, she believes, a more honest corporate culture would be created, so that the executive miscreant would no longer be complying with company norms. Corporate chiefs would be compelled to communicate and demonstrate by words, deeds, and sanctions, imitable ethical behavior and standards that would permeate the company. White-collar crime would become intolerable.

Corporate codes of ethics, such as those suggested by Mathews, may be a preventive measure with the potential to reduce the rise of white-collar crime in a workplace environment. Viewing prevention from a wider angle, some look beyond documentary regulations and argue that industrial capitalism and our 'culture of competition' inevitably give rise to occupational crime.

Coleman (1989) stresses that the desire for success and fear of failure in our society foster employee malpractice. He contends

that if we, as a nation, modify our uni-goal materialistic orientation, we would be in a much better position to combat the growth we're experiencing in workplace deviance. He does admit, though, that cultural evolution of this sort tends to be painfully slow.

Long before America reached the stage of moral decline of which Coleman, Matthews, and Sutherland speak, the inverse relationship between modernization and morality was observed and addressed. Hurst (1960), looking at the development of law in premodern and commercializing colonial America, explains how it was intertwined with "moral hegemony." For much of the colonial period, says Hurst, the 'sociomoral' rulers, particularly in New England, linked crime with sin. The sinner was a moral deviant, and a lawbreaker, who, it was believed, in most cases, could be rehabilitated through some form of public punishment.

"Except for the most hardened and abandoned cases, it was thought that men could respond to pressure and improve their way of life if they were instructed in proper behavior, punished for wrong conduct, subjected to shame and derision from their neighbors, and stigmatized when they strayed from the straight and narrow path. This is the reason why punishment was so open, so public. The man who was whipped in view of everyone was receiving physical punishment; but far more important, perhaps, he felt on his back the invisible whip of public opinion (Hurst, 1960: 14)."

Though there was representative government in some of the colonies, Colonial society, explains Hurst, was not democratic. "It was not the merchant, landowner, or minister who was whipped in public, branded, and set in the stocks. These were punishments for servants, laborers, and apprentices. The people who owned property, the leaders, and their willing followers defined what was the correct morality. The criminal law enforced this code...From the standpoint of the twentieth century, the law of crime and punishment is remarkable because of its emphasis on crime against morality - particularly what we would now call victimless crimes (1960: 15)."

To the early American settlers every sin or moral transgression had a victim; and that victim was society. Sins and moral transgressions were defined as crimes, and thus handled under criminal law. An individual who blasphemed God, or who was idle, or who slept with a servant girl, was a sinner and a criminal. Punishment was essential, if the moral order was to be preserved. In civil cases, as in criminal cases, the needs of the social order were also met.

"Colonial justice was open and cheap", says Hurst, particularly in the early colonial period and in the theocratic Puritan colonies. "People did not hesitate to bring disputes to court, even for rather petty claims...courts were inexpensive and at everybody's doorstep. No affair was too petty for scrutiny...In

the nineteenth century the legal system changed dramatically...The statute books kept the old moral laws...But this is only the surface; in reality, these laws soon fell out of use...Criminal justice turned its attention to crimes against property; to crimes such as burglary and theft (1960: 15-16)."

As the eighteenth century progressed, and society became more secular and commercial, the association between law and morality weakened. Though the statute books of the American colonies reveal a variety of laws designed to regulate public morals, interest in the enforcement of these laws declined. Law now functioned to promote materialism more than morality. Eighteenth century enactments demonstrate a growing concern for the creation of a successful market economy, an interest in laws regulating and facilitating commerce.

"The lack of popular enthusiasm for participation in the enforcement of morals infected those officially charged with this task. Governors, reformers, and clerical leaders frequently blamed responsible officials for their unwilingness to enforce the laws. ...(L)ack of zeal extended to grand jurors, petty jurors, churchwardens, constables, and deputy sheriffs as well. They exercised a potential veto power over the extent to which morals were to be enforced in any locality. In the eighteenth century this veto reached heights of absurdity when an individual agreed to pay child support in a bastardy case, but a jury refused to

convict him of fornication (Flaherty, 1971: 64-65)."

By the nineteenth century, says Coleman (1989), modernization had firmly established the ethos of money over morality, the struggle for personal gain as a prime and positive activity. Explaining the transition from a cooperative egalitarian ethos to one of money over morality, Coleman says that anthropological studies of the few remaining hunting and gathering societies indicate that most of those societies are "strongly egalitarian, with no social classes or even much in the way of permanent political leadership." He attributes the difference between the hunting and gathering society and the modernized society to the fact that the former produces little surplus wealth.

"Thus," says Coleman, "the economic base cannot support the system of status competition based upon the accumulation of wealth that is found in the industrial societies...the enormous surplus wealth generated through industrial production provides a vast store of material goods to be competed for - a condition largely absent from hunting and gathering societies (1989: 207-209)."

Given the death of cooperative sentiments, and the rise of a profit and loss mentality, the resuting immorality and criminality in our modernized society will ultimately be reduced only by a major restructuring of our social and economic relationships, says Coleman. However, he stresses, there are several structural reforms (e.g., adding public representatives to the boards of

directors of all major corportions, nationalizing firms with long records of criminal violations), which if introduced into our corporate and legal structure, can have a positive moral impact on our contemporary culture.

Like Coleman and many others, Durkheim (1947) is interested in the relationship between modernization, secularization, morality, and law. His interest, though, is apolitical. He does not address the role of the actors and institutions that create, interpret, and apply rules and laws, nor the substance of law. He appears indifferent to how law is actually organized, how the state functions as a mechanism through which collective morality is expressed. He overstates the role of repressive law in pre-industrial societies, and understates its role in industrialized society. No mention is made of the fact that elements of repressive and restitutive law appear in both premodern and modernized cultures. Short shrift is given to the relationship between law and domination, or to the concept of social conflict in the creation of legislation. Similarly, there is no analysis of moral conflict within society, or of how morality and law can concur or conflict. Social and moral conflict are viewed as pathological and transitory.

Durkheim stresses that crime and punishment together are socially normal. A crime-free society is impossible because new crimes will be defined to bolster the boundaries of the social

order. Though elements of labelling theory are present in his position, basically, Durkheim believes in consensus, in a core of social norms. Moral deviance in the modernized society is a product of rapid population increase, agricultural advancements, trade, and forced division of labor, all of which strain the consensual moral order. Division of labor leads to economic development, admits Durkheim, but not to moral progress. Social rules become less binding due to decreasing consensus. Ultimately this leads to anomie, despair, alienation, and deviance.

Law, according to Durkheim, symbolizes the nature of social solidarity and morality. It evolves as a culture evolves, and functions to punish those who violate collective sentiments. Life in general, within a society, can not enlarge in scope without legal activity also expanding. Born from ritualistic religious practices, penal law, and organized sanctions, law in a modernizing culture, says Durkheim, moves toward the prevalence of civil, commercial, and administrative law with purely restitutory sanctions. Changes in the law reflect changes in a culture's economic structure and morality. Modernization brings financial gain, financial problems, moral problems -- and modern law.

Whether we look at Durkheim, Weber, or lesser known social theorists who examine modernization in a socio-legal context, we come away feeling that morality is a casualty of economic development, that crime is an inevitable accompaniment of

modernization, and that ethical-legal change is badly needed in order to thwart behavior capable of undermining the modernization process.

Conclusion - Law as a Lubricant of Modernization

This chapter has concentrated on one specific form of social change - modernization - and the role of legal change in the modernization process. For the purpose of this study, modernization refers to the gradual transformation of society through urbanization, commercialization, secularization, industrialization, law, science, and technology. Law, or legal change, is a single, but significant, factor in modernization, accompanying every stage of the process. An accurate, complete discussion of modernization must include the effect of law on all aspects of modernization, and the concurrent influence of the various aspects of modernization on legalization, legislation, and law enforcement. As mentioned in Chapter I, Louise Shelley has not included law as a significant factor in her influential theory linking modernization and property crime, thereby dismissing a powerful intervening variable, overstating a pessimistic connection, and giving rise to this present research.

Materialism is implicit in the modernization-crime relationship. As a society experiences modernization, emphasis on traditional and spiritual values is replaced by material and financial concerns and priorities; and law serves to facilitate

and restrict such concerns and priorities. To discuss whether modernization, and the materialism inherent in the process, is socially constructive is similar to discussing whether any form of social change is 'good' or 'bad.' It depends on perspective, on who is making the judgment. Many people equate modernization with social advancement. They may lament the disintegration of spiritual values, and the overemphasis on monetary goals, but they believe that, overall, modernization improves the quality of life for most people, bringing new knowledge, opportunities, and comforts. Some disagree with this evaluation, insisting that the problems accompanying modernization (e.g., anomie, envy, crime) cancel any claims of social gain.

Regardless of how modernization is perceived, and effectuated, those subject to it want it to occur with minimal disorder. Since modernizing societies share an inevitable restructuring of their political, economic, social, and moral systems, social controls are introduced into a newly developing culture to coordinate these four interrelated components of modernization. Prime among these social controls is law.

Law is present in each of the four components of modernization. As the political component of modernization develops, the state becomes more powerful. Law becomes more statutory, impersonal, and rule-bound. More people participate in the creation of legislation. Emphasis is on tangible, material

considerations. More professionalism is introduced into lawmaking and law enforcement. More special interest groups are served.

As the economic component of modernization evolves, private property, financial transactions, and monetary goals assume major significance. Materialism increases dramatically. New crimes are defined. Criminal law is seen as assisting economic development, as a restraint on behavior capable of undermining a nation's financial growth, as a lubricant of modernization.

In examing the social component of modernization, we see law not as fostering materialistic concerns, but as attempting to treat social problems, day-by-day despairs of individuals. Urban crowding, poor sanitation, illiteracy, unemployment, racial disharmony, alcoholism, crime, and many other socially destructive situations are addressed, with varying degrees of effectiveness, by what could be termed 'alleviation legislation.'

The moral component of modernization pushes law to its limits. In a modernizing culture, law functions primarily to promote material, not moral, values. Modern law is interested in suppressing secular illegalities, not spiritual immoralities. Traditional moral values are inconsistent with the material focus of modernization. Often there exists an inverse relationship between modernization and morality. However, when immorality and illegality overlap, creative, conscientious law can function to suppress both, and protect modernization.

CHAPTER III: MODERNIZATION, CRIME, AND 'THWART' LAW

The relationship between modernization and crime has been described as inevitable. As a culture moves from a traditional, rural, barter-based, agrarian economy with little surplus production, to a secular, urban, cash and commerce-based society, new crimes, and new definitions of crime, accompany this transition.

Louise Shelley's book, Crime and Modernization: The Impact of Industrialization and Urbanization on Crime, (1981) draws together extensive theoretical, international and historical research on crime and modernization. Major focus is on the connection between the modernization processes of industrialization and urbanization

and increased property crime. The study analyzes "global" and "smaller-scale" theories linking modernization and crime in the context of both developing and developed capitalist and socialist societies over a two-hundred year period. Shelley concludes that though the relationship between modernization and crime is not a simple linear one, the proliferation of contemporary crime can be explained in terms of the modernization process.

Shelley's perspective is sweeping in scope and claim. She argues that her theory is not only timely, but universal, like the late nineteenth century theory of social scientists, such as Durkheim, in that it explains crime in terms of larger social forces (e.g., rapid socio-economic change and subsequent anomie). However, she stresses, her perspective advances beyond the nineteenth century global theories because it subsumes all the major American twentieth century theories of crime (focusing on the impact of modernization on crime in terms of individuals, social groups, and specific communities), while also analyzing modernization cross culturally and historically. The process of modernization, asserts Shelley, has a significant and consistent impact on crime in <u>all</u> societies, independent of time, place, developmental stage or political or economic structure.

James Short Jr's foreword to Shelley's book states that the data available to Shelley does not "solve all questions of crime causation, as Shelley readily acknowledges...The implications of

alternative systems of social control have hardly been conceptualized as a problem. Clearly much remains to be done...Louise Shelley has advanced both an understanding of the study of crime and a challenge to future scholars...Hopefully, her assessment will also inspire more sytematic inquiry in this important area (1981: x)."

It is with these words in mind that this current research was undertaken. What is the role of the law in redefining traditional or other existing behavior as criminal behavior? What are the systems of crime control, discussed by Shelley, that have been used? What are the "implications of alternative systems of social control," such as law, which are not discussed by Shelley? How can law be designed for effectiveness in controlling crime in a modernizing culture? This latter question is the focus of this present study which attempts to extend Shelley's line of argument.

Perhaps because it is so sweeping in scope, Shelley's study had to take short cuts in comparing the many cultures covered. The legal systems of the various cultures mentioned are not compared or contrasted. No attention is given to criminal, or civil, law as a means of controlling property crime. It is possible that Shelley does not regard law as an agent of social change, as a force capable of dealing with the problems of modernization. Prominent economic theorists also have ignored, or glossed over, the role of law as an active agent in the modernization process. Rostow

(1962), for example, in discussing the preconditions for a "take-off" into economic growth makes no mention of the role of law, criminal or civil, in the process. Though Weber (1969) says a great deal about the importance of "substantive law" in a developing society, he does not detail how it might be crafted to minimize the property crimes accompanying modernization. Both these men, though, were focusing exclusively on economic development. Because Shelley posits a causal connection between modernization (which includes economic development) and property crime, it behooves her to include some discussion of criminal and/or civil law as a mechanism of social control -- even if she believes law to be ineffective. No such discussion exists.

"The transition from a society dominated by crimes of violence to one characterized by property offenses is the hallmark of modernization, says Shelley. "Violent criminality is both a symptom of rural life as well as an indication of the problems associated with the adjustment to urban life. Property crime is a natural consequence of modern urban settlement with its emphasis on material goods unequally distributed to all inhabitants (1981: 36-37)." Do not Shelley's words "natural consequence" imply a 'done deal,' a hopeless situation? If there is any question that Shelley believes this "natural consequence" can be alleviated, it is cancelled by her claim that, "As the primary causes of criminality appear to be rooted both on the societal and the

personal level in the social structure and the disruptions of societal transformation, there is little that can be done by governments or individuals to control the problem of crime (1981: 64-65)." This is an "unfortunate conclusion," continues Shelley, but one that confirms "...Durkheim's statement that crime is a normal, natural, and consequently an uncontrollable phenomenon in society (1981: 65)."

Though increased property crime may be a "natural consequence" of modernization, as Shelley claims, we must ask how "uncontrollable" it is. Can it not at least be inhibited, despite the fact that it is "normal" and "natural?". Might carefully customized criminal laws reduce the crime component of modernization?

Shelley sees the major legal consequence of modernization not as the creation of criminal law, which was a significant development of the eighteenth century which she covers, but as the creation of new crime patterns (a shift from violent to property crimes). Some intervening variables are discussed; but the issue of how pivotal law can be in stimulating or controlling modernization is largely ignored. "Only political, religious, and economic controls exercised by the society over its members appear sufficiently strong to avert the (criminal) consequences of modernization," says Shelley (1981: 142)."

Slighting law as a factor in modernization, Shelley

illustrates the role of political, religious, and economic controls, but notes that they are all only temporary crime averters. The political control of which she speaks is based not on the creation of a body of preventive criminal law and a criminal justice system geared toward enforcing this law, but on the rigid regulations and extremely punitive policies of totalitarian regimes.

When societies enforce deliberate social policies (e.g. orchestrating mobility - who is allowed to live where, and how many people are permitted to move into a given area) "...that prevent or control the seemingly inevitable urbanization accompanying economic development, then the consequent growth and transformation of criminality that accompanies modernization may be partially voided," says Shelley. "When political regimes such as Stalin's in the Soviet Union and Franco's in Spain maintain strict control over the criminal population through long prison terms or by annihilation, then even a modernizing society can contain some of its crime problems (1981: 142)."

The religious control of which Shelley speaks is that of traditions associated with religious heritage, which she believes make societies "...at least partly immune to some of the destabilizing criminogenic consequences of modernization...Japan and the countries of the Middle East, which have preserved their traditional cultural values in the face of modern technology,

increasing industrialization, and societal prosperity, have crime rates well below those of nations at comparable levels of social and economic development (1981: 142)."

"A society may also avert the disorienting and criminogenic consequences of modernization by means of economic controls," says Shelley, who explains such control in terms of the distribution of wealth in certain countries. "(I)n the socialist countries of Eastern Europe where controls are placed over the distribution of wealth, employment is guaranteed, and the fruits of material success are hidden from the general public, crime rates are much lower than in most developing nations. The crime problem is aggravated where the financial gap between rich and poor is enormous or, as in the United States, where advertising through the mass media fosters the feeling of deprivation among large numbers of less affluent members of the population (1981: 142)."

Despite political, religious, and economic controls, says Shelley, so powerful is the connection between modernization and crime that even strong social controls can only "...forestall or lessen the impact but cannot prevent what appears to be the almost inevitable transformation of crime in modern society (1981: 143)."

Though not discussing law as a means of averting crime in the modernization process, Shelley notes that legislation is a byproduct of modernization, whether or not it is effective in suppressing crime. She explains that in assessing the relationship

between modernization and crime, distinction is made between an increase in crime rates and an increase in the number of acts that we label as criminal and pass new laws against. Studies are cited which control for the latter while analyzing the former. Also cited is research (in keeping with Durkheim's 'crime is normal' contention') which underscores the fact that modernization opens the door for new kinds of deviance to become criminalized.

"Major studies of the development of crime in England, France, Germany, and Sweden in the nineteenth century and in Russia in the twentieth century have been conducted by reputable scholars," says Shelley (1981:29). "(A)ll analyze crime in the context of urbanization, economic transition, and the social conditions of these populations. The authors of the studies isolate fluctuations in criminal behavior attributable to changes in law and judicial practice from those resulting from social forces.

As a culture modernizes, says Shelley, certain acts (e.g. drug use, prostitution) change in nature or frequency. They are "...transformed rather than created by development (1981:47)." Other acts (bribery, kickback schemes) that were initially non-criminal (and continue to be in some countries) become criminalized. Also, forms of crime appear that were unknown and unexperienced in previous centuries (e,g. bank robbery, automobile theft, plane hijacking)." These latter crimes "...differentiate

the twentieth-century developmental process from that of the nineteenth century (1981: 45-47)."

Distinguishing between the prevalence of crime in developing and developed societies, Shelley says "The level of crime in developing countries is considerably below that of developed countries but as these nations move towards modernization their crime rates are approaching those of the more impersonal, industrialized societies (1981: 49)." Though this would appear to be a good place for Shelley to discuss law (to some degree at least) as a possible mechanism of social control in a modernizing culture, she contends that, "A detailed discussion of the judicial and legislative response to the crime problem is outside the scope of this book, but at least a cursory acknowledgment must be made of the fact that many developing countries are not passively observing the dramatic increase in criminality (1981: 64)."

Focus instead turns to mobility, immigration, urbanization, and industrialization as destroying traditional social structures and precipitating criminality. Discussing the conditions of urbanization and industrialization in regard to criminality, Shelley spends much of the remainder of the book explaining that:

* with rapid urbanization cities are ill equipped to assimilate increasing numbers of untrained immigrants into the urban work force; unemployment and frustration follow; slums develop and breed criminality as an answer to financial need, and

as an outlet for personal tensions.

* when economies become based on industrial - rather than agricultural - production, the lives of individuals no longer center on the extended family, but on impersonal workplace ties; when primary bonds (which are a form of social control) weaken, criminality increases.

* in societies where industrialization is accomplished without high urbanization (e.g., Switzerland), crime is controlled and averted; industry is decentralized into rural and semirural areas, thus eliminating the problems that arise from social overcrowding.

* urbanization and industrialization give rise to the development of an expanded criminal justice system, which generally does little to slow the growth of crime, particularly in human rights oriented, capitalist cultures.

* property crime becomes the dominant form of criminality in modernizing societies as tangible goods assume a previously unknown significance; need and greed become confused.

* a stabilization in crime patterns appears to accompany the maturation of the modernization process; one of the reasons that America is experiencing exceptionally high crime rates is that, though modernized, it is still undergoing rapid urbanization.

* the social conditions most successful in controlling the rise in crime rates associated with modernization have been

deurbanization (as in Switzerland), close family ties, ethnic homogeneity, and consensus and cooperation between the civilian population and the criminal justice system.

Modernization and 'Thwart' Law

As previously stated, this study is an attempt to extend Louise Shelley's position on the inevitable relationship between modernization and property crime. If property crime is, as she contends, "the hallmark of modernization," then effective, and humane, crime prevention strategies are essential for the unhampered enjoyment, preservation, and perpetuation of the positive effects of modernization. Law is one such strategy, and a major one.

While Shelley has chosen to exclude law from her research, this study focuses on the place of law in the relationship between modernization and crime. The overriding question we shall ask is: To what extent does the law (whether as a leading or lagging institution) support the modernization process as a whole --with all its undesirable side-effects? Also, what specific types of law might be especially potent in inhibiting property crime in a modernizing culture?

In an attempt to answer these questions, this study will build on Shelley's hypothesis of a causal connection between modernization and crime. In particular, it will analyze the relationship between the development of commerce (an early stage

of modernization), counterfeiting (seen both as a property and as a political crime), and anti-counterfeiting legislation (an example of criminal law) in colonial New York (1664-1776, when New York was a British colony). It will challenge Shelley's hypothesis by seeing the anti-counterfeiting legislation devised in colonial New York as "thwart law," which is a most effective means of social control, in a modernizing society.

Thwart Law is defined herein as: Anticipatory legislation containing, within the text of the law, specific provisions and stipulations designed to foil or frustrate criminal behavior. It is a preventive, more than a punitive, response to property crime. Seen in the anti-counterfeiting legislation of colonial New York (illustrated in Chapter V), thwart law contains 'techno-thwarts,' 'perimeter thwarts,' and 'penal thwarts,' devised to obstruct, restrict, and suppress already experienced, and thus foreseeable, illegal acts associated with property offenses.

Techno-Thwarts, Perimeter Thwarts, Penal Thwarts

Though it can be argued that the goal of all criminal law, in a developing or developed culture, is to prevent, or thwart, crimes that interfere with the welfare of the state, this is often not true. Some criminal law is deliberately vague, written mainly to pacify certain power groups (Turk, 1969). Also, statutes were (and still are) considered general statements intended to be made more specific through judicial interpretation.

Much criminal law, particularly as it relates to white-collar crimes, is unenforced, underenforced, or unenforceable (Clinard, 1979). Also, even when social change is genuinely hoped for, legislation is often watered down by compromise, or written carelessly, without specificity or muscle. Thus, it is essentially useless.

Ideally, a piece of legislation designed to thwart property crime, would include:

* **techno-thwarts** (precisely worded technological deterrents, e.g., a regulation requiring the installation, during production, of a specific anti-theft device in all newly manufactured cars),

* **perimeter thwarts** (specified boundaries which can not be legally exceeded by would-be perpetrators or those in a position to assist them, e.g., a regulation requiring banks to report all monetary transactions over $10,000), and

* **penal thwarts** (explicit, publicized sanctions, written into all relevant legislation, in a style likely to deter would-be, before-the-fact perpetrators, e.g., a regulation requiring five years incarceration, in a grim facility beyond the visiting reach of family and friends, for all embezzlers, regardless of amount embezzled, position in company, etc.

These three thwarts are intended to work together to minimize economically destructive acts. This is the consummate situation; all legislation can not be so structured, or written, especially

as concerns techno- and perimeter thwarts.

Techno-thwarts are best suited to legislation dealing with tangible products. Some modification is required in a product being sold, or created, so that it becomes more difficult for a would-be offender to 'pull off' his crime with ease. It's legalized target hardening. If anti-theft devices are ordered installed in newly manufactured automobiles, the would-be auto thief will be frustrated in his attempt to steal cars. If currency is ordered to be intricately designed, so as to make it less easy to imitate, the would-be counterfeiter will be frustrated in his attempts to create fake bills. The professional, or hard-core, thief probably will continue his craft, but with less success (assuming a quality techno-thwart); and the marginal offender may be completely deterred.

In instances where a tangible product is not being targeted for expropriation, but where a fraud is nevertheless being perpetrated (e.g., money laundering, insurance scams), a techno-thwart may or may not be applicable. Here, however, perimeter thwarts can be appropriate and effective. Legal limits, restrictions, boundaries are formally established. Wherever possible, watchdogs (e.g., banking institutions, as in recent money laundering laws; masters and wardens, as in eighteenth century enactments regarding the sale of damaged merchandise) are assigned the task of overseeing adherence to these perimeters, and

are penalized for defaulting on their responsibilities.

Penal thwarts are the easiest to enact into law in that they require the least amount of imagination; however, they do require a correct balance between severity and laxity. Whereas it takes forethought, planning, testing, modification, and review to devise and develop effective techno- or perimeter thwarts, creating effective penal thwarts requires an understanding of what might intimidate individuals into inaction, but not be so harsh as to deter jury convictions (e.g., all individuals caught in possession of drugs will be immediately executed).

Crime can be dramatically reduced in an undemocratic political-legal situation where harsh punishments are promised and provided; but when crime is thus reduced, so too may be human rights. Techno- and Perimeter Thwarts are more civilized forms of legislation than are thwarts that simply rely on deterrence through fear of consequence. This does not mean, though, that penal thwarts do not have a place in legislation. They are necessary, but in combination with techno- and/or perimeter thwarts.

Penal thwarts can not be eliminated from legislation. They are a response to the reality of human nature. Some individuals, under certain circumstances, are deterred, because of penal thwarts, from committing economic crimes. Where potential perpetrators have the time and inclination to correctly calculate

the rewards and risks of a specific property crime, it has been shown that they are deterred by such factors as certainty of arrest and incarceration (Geerken and Gove, 1977). Still, ideally, a modernizing society should aim for an integrated thwart approach in order to maximize socio-psychological development. Legislation wise, this means writing into law, whenever possible, techno- and perimeter thwarts (that reduce opportunity) and penal threats (that temper temptation).

Fighting Fraud (with Thwart Law) in Early New York

With the growth of trade in eighteenth century New York there came an increase in insurance related frauds involving the sale of imported goods. Local newspapers frequently reported these frauds (as they did all financial frauds threatening colonial development), warning that they could interfere with the growth of commerce in the newly developing society, and that remedies were necessary. Responding to the threat, and to journalistic pressure, on September 11, 1761 New York colony passed "An Act to prevent Frauds in the Sale of Damaged Goods imported into this Colony (Colonial Laws, Vol. IV: 544-546)." This act, sought to "remedy" an eighteenthth century scam with specific thwarts. Opening with the following words, it explained the problem as thus:

"Whereas Goods imported here, and Insured in Great Britain, and elsewhere abroad are sometimes sold in this City, for the Account of the Insurers, and some persons taking the Advantage of

their absence, have frequently made fraudulent Sales to the great prejudice of the Insurers, the Undue Gain of the Assured, and detriment of the Commerce of this Colony, For a Remedy Therefore...BE IT ENACTED.....(Colonial Laws, Vol. IV: 544)."

Going on for several paragraphs this enactment describes how to thwart those seeking to 'ripoff' overseas insurers:

"(A)ll damaged Goods hereafter to be Sold for Account of the Insurers shall be Surveyed by the Master, or one, or more of the Wardens, of the Port of New York...upon the first unlading...or as soon after as the same are discovered to be damaged; & Such Sale Shall be made in his or their Presence, at Publick (sic) Vendue in the most publick (sic) & Convenient place, ...Advertising the Sale thereof at least Twenty four Hours before...which said Goods shall be only Such as are really damaged in the judgment of Such Master or Wardens, & the Sale thereof Shall be in Such separate pieces or Small parcells (sic) at a time as such Master of Wardens Shall think most for the Interest of the Insurer...the Master, & Warden or Wardens Shall each receive Ten Shillings a day, for attending the services...by the person at whose request the Sale is made...& the Master & Wardens or either of them offending against this Act, Shall for every Offence forfeit the Sum of Twenty Pounds...(Colonial Laws, IV: 544-545)."

What we see here are specified perimeters of behavior (e.g., "upon the first unlading," advertising the sale at least twenty

four hours before..., sale shall be in separate pieces or small parcels "for the interest of the insurer") that must envelop all action regarding the sale of imported goods claimed to be damaged. Clearly, the intention is to thwart those seeking to profit, at the expense of the insurer, from false claims.

In addition to permimeter thwarts, this act also includes penal thwarts (e.g., masters or wardens "offending against this Act, Shall for every Offence forfeit...") devised to punish authorities who might conspire with would-be profiteers.

Without tracing prosecutions under it, we have no way of knowing for certain how effective this particular piece of thwart legislation was, but we do have some clues. The enactment ended with the words, "...that this Act, shall Continue & be in Force, Untill (sic) the first day of January, One Thousand Seven Hundred & Sixty three (Colonial Laws, IV: 546)." Given that it was passed on September 11, 1761, it was the intention of those who created the legislation that it remain in effect for approximately one and a third years. (It was customary in colonial America to enact legislation for limited periods (Colonial Laws: vi); an enactment would be reviewed upon expiration to determine whether or not it should be continued). On December 11, 1762 "An Act to continue an Act Entituled (sic) 'An Act to prevent Frauds in the Sale of damaged goods imported into this Colony'" was passed. This continuation enactment was to be in effect "...from the first day

of January next Until the first day of January which will be in the Year of Our Lord One thousand Seven hundred and Sixty Eight (Colonial Laws, Vol. IV: 653)."

Apparently, the Governor, the Council, and the General Assembly, who chose to renew this act for another five years, found that it had some positive value; and this view held, at least up until the American Revolution. On December 24, 1767 the act was renewed for seven more years, to be "...in full force and Virtue to all intents and purposes to the first day of January which will be in the year of our Lord One thousand Seven Hundred and Seventy five (Colonial Laws, Vol. IV: 958)."

Though the colonial New York lawmakers did not say to themselves, "Let us create 'thwart law' as a means of assisting the modernization process," the concept of legally thwarting property crimes that could interfere with commercial growth was very much in their minds. As mentioned in the opening paragraph of the insurance fraud act just discussed ("...to the great prejudice of the Insurers, the Undue Gain of the Assured, and detriment of the Commerce of this Colony, For a Remedy Therefore...), and as will be evidenced in the analysis, in Chapter V, of anti-counterfeiting legislation, protecting the commerce of the colony was a prime consideration, and was written into several laws in order to explain, or justify, their creation.

As seen, when the laws of colonial New York (and other

colonies as well) were perceived to be working, in terms of thwarting undesirable acts, they were renewed. If lawmakers thought a piece of legislation needed modification to be more effective, it was amended. If a law expired, and it was believed it could again be useful, it was revived. If it appeared as though a law was useless, it was repealed. When a new variation of criminal activity arose, and it was deemed necessary to prevent it in the best interests of commercialization, a new act was passed.

Throughout the law books of colonial New York, examples abound of all of the above (alongside enactments having nothing to do with thwarting specific behaviors). The colonists believed strongly in the power of legislation to assist socio-economic change and control criminality, and were concerned with reviewing, perfecting, and optimizing, their laws -- a perspective that could well be imitated today in many newly developing societies around the globe.

When is 'Thwart Law' Likely to Work?

If we look at thwart law just in terms of the non-violent offender, or of thwarting non-violent crimes, such law is likely to work best when there is a clear public awareness of its existence. The better informed the general citizenry, as well as potential offenders, about the content and meaning of laws, the more potent are thwart efforts.

In a modernizing society, general public awareness of

legislation aimed at minimizing property crime is likely to influence compliance - if not necessarily of an individual nature, then of a societal nature. This is particularly true in a fledgling economy where individuals and social groups are struggling daily to survive in a newly formed culture or country.

In colonial New York, for example, the more the newspapers printed stories of counterfeiters arrested for violating enactments devised to suppress specific counterfeiting acts (e.g., coin clipping, bill altering) that were endangering commercialization, the more the public became knowledgable about what was illegal in regard to currency transactions, and the more they assisted the government in prosecuting offenders (Scott, 1953).

Whether modern or modernizing, thwart law is most likely to work in a society where there exists a local media providing extensive coverage of local events and problems. Ideally, the media, regardless of how unrefined it may be, continually informs the public of legislative attempts to control economic crimes that threaten societal well-being, and urges the public to cooperate with the government in reducing criminality. Add to this media effort, a criminal justice system oriented towards investigation of violations and enforcement of laws, and economic development is positioned to proceed with reduced impediments.

In the major cities of eighteenth century colonial America

the local media and the local criminal justice system were interrelated, a situation that increased the effectiveness of thwart law. Printers and publishers were people of power and influence in early America. Those who passed and printed the colonies' statutes were likely to be those who published the colonies' newspapers and other sources of written information. Additionally, these were the individuals who printed the colonies' currencies, and had a personal stake in maintaining the integrity of their colonies' bills of credit.

Discussing the prosperity and power of colonial American printers and publishers, Bridenbaugh (1971b: 183) says, "Printing was above all a profitable trade...for those fortunate enough to win government patronage, the printing of proclamations, proceedings of the provincial assemblies, laws, and paper money proved a most lucrative business...the leading printers acquired both reputation and influence."

In any developing culture statutory law doesn't work just because it is well structured in terms of a combination of comprehensive thwarts, or because it is written down somewhere. It works because influential, empowered, and vocal segments of the society know about its existence, see a need for it, want it to work, and labor towards this end.

In a modernizing culture the influential, empowered, and vocal segments of the society are likely, if not to be one and the

same, to overlap considerably. Thus, assuming that they are not criminally inclined (which is a generous assumption), they are a potent group in terms of controlling property crimes capable of interfering with economic growth.

Where special interest groups are well-formed, influential, empowered, vocal, and often sharply in conflict with each other as to what constitutes a property crime, or what property crimes are most in need of addressing, the strong consensual mandate necessary for the enactment and success of thwart law may well be lacking. Such a situation can lead to weak law -- 'loophole law' composed of obligatory statutes lacking in proper planning, precision, and penalties.

Not only is thwart law likely to work better in a newly developing economy than in a modernized society, but it is also likely to suppress certain types of crimes more easily than others. Premeditated property crimes will be reduced more than will violent crimes. Also, property crimes that are popularly perceived as economically threatening give rise to a fear factor that facilitates the enactment and enforcement of quality legislation. Additionally, those property crimes that lend themselves well to a combination of techno-, perimeter, and penal thwarts will be the most responsive to thwart law. Where there exists the possibility of:

* ordering the modification of a product or service to make

it more resistant to criminal appropriation or manipulation,

* applying quantitative, procedural, or geographical regulations or restrictions,

* authorizing swift, severe, and certain sanctions,

there exists great promise for the role of thwart law in reducing economic malfactions capable of hampering the modernization process. It may not work in all situations, but the preconditions supporting its success are present.

An example of this will be seen in Chapter V's discussion of the anti-counterfeiting legislation of colonial New York. Though counterfeiting often is not perceived to be a danger to a modernizing culture, when it is perceived as such, the laws that can be enacted to thwart it can be promising and potent.

What Special Interests does Thwart Law Serve?

A case can be made, especially in a newly forming economy, to support the contention that thwart law serves all interest groups in the society. Regardless of immediate or narrow concerns, the survival of the culture is a major concern. The fledgling society is vulnerable. It can easily disintegrate and disappear. Any enactments that protect the developmental process are important to all members of the culture. Viewed from this perspective, thwart law does not serve any specific group or class. It serves everyone who wants to continue to live in the society. Often, such perspective, though correct, is not universally shared.

In a commercializing culture there exist merchants, manufacturers, clergymen, laborers, drifters, seamen, farmers, landowners, lawmakers, and many other occupational or status groups. These are the insiders of the society. They are linked by location and environment, but they do not necessarily view themselves as a united front. From their differing perspectives, thwart law may seem important, or unimportant, relevant or irrelevant to their daily lives. They may be interested in protecting their tomorrows, or just getting through their todays.

Certain groups (e.g., manufacturers and merchants) in a newly forming culture are political, overlap, and sympathize with each other's concerns. Other groups (e.g., drifters and landowners) have little contact or common interests. In contrast to the merchant class which may be particularly interested in the creation of thwart legislation, the laboring class may be totally ignorant of it, or indifferent to it.

In studying whose interests, in a developing economy, or any economy, are served by thwart law, one also studies whose interests are thwarted (as we'll see in upcoming chapters analyzing counterfeiting fraud in colonial New York). From a preliminary inspection it is easy to conclude that the interests of members of the established, propertied, or monied classes are served, and the interests of members of the less privileged, or lower, classes are thwarted. Those concerned with preserving and

perpetuating their assets and power are assisted by legislation designed towards such ends. Those who might be tempted to acquire profit through unsavory means are hampered by such legislation. Though this conclusion is not completely incorrect, it does not tell the whole story of thwart law in terms of who is helped and who is hurt.

In assessing thwart law it is necessary to understand that such law is constructed to thwart specific behavior, not specific people. In Chapters V and VI we will see, from an analysis of the anti-counterfeiting laws of colonial New York, and from court records documenting counterfeiting indictments and convictions, that all classes and kinds of people engaged in variants of counterfeiting activity. The law struggled to keep up with new twists and turns introduced by the dozens of rogues, rascals, and respectable citizens who attempted to thwart the thwart law through legal loopholes.

In a modernizing, just as in a modern, society, all sorts of 'respectable' citizens are likely to be lawbreakers -- under certain circumstances:

* when they do not perceive of their behavior as criminal;
* when they do not perceive of their behavior as violent;
* when they can rationalize their behavior;
* when opportunity is present and obvious.

Though the marginal offender is more likely to be deterred

(by thwart law) from common crime than is the professional thief, given these circumstances, there is no evidence to make us believe that society's privileged are more likely to be repressed by thwart law than are society's rabble. Actually, they might be less likely, if, in addition to the above conditions, they believe that if caught, they will be spared serious or humiliating punishment.

In many of the American colonies, not unlike today, lawmakers were also lawbreakers where (what we now call) 'white-collar' crimes were concerned. Just as professional thieves engaged in illegal currency frauds, so too did the reputable merchants and businessmen who often served as the colonies' lawmakers. Despite some good thwart laws, they participated in, and persisted in, illegal counterfeiting acts; and they were indicted. However, as court records and newspaper accounts document, they did not face the severe punishments experienced by the less fortunate classes.

Conclusion - A Missing Link

This chapter, focusing on the the fact that a major theory connecting modernization and crime has failed to include the role of law in the linkage, introduces the concept of 'Thwart Law' as a mitigating, intervening variable in the modernization-crime relationship. Criminologist Louise Shelley, drawing on theoretical, cross-cultural, and historical research argues that increased property crime is a natural, uncontrollable consequence of modernization. The process of modernization, says Shelley,

regardless of where, when, or under what economic regime it occurs, produces common patterns of criminality in culturally diverse societies. The progression from violent crime to property crime is unyielding, despite temporary crime averters based on political, religious, or economic controls, insists Shelley.

Law, as we have discussed in Chapters I and II, is inextricably linked to social change, and is a lubricant of modernization. Its glaring omission from Shelley's theory implies that it is not even a temporary averter of crime, that it is powerless to reduce the criminological consequences of modernization, that the alarming increase in criminality, which threatens "the very process of societal development (1981:41)," can not be remedied by law, regardless of how well constructed the law may be. "Crime has become one of the most tangible and significant costs of modernization," in all societies, laments Shelley, who asks, resignedly, "Why is it that modernization has such a generally homogeneous effect on crime (1981: 137)?"

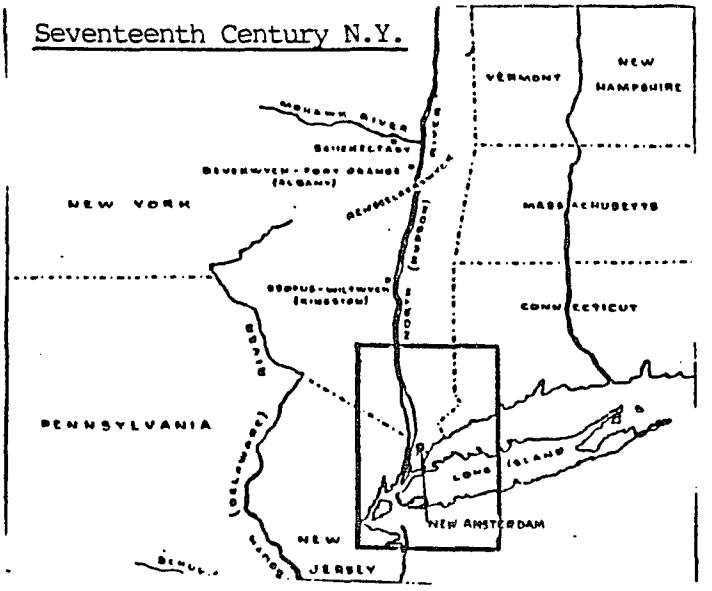
Rejecting Shelley's acceptance of crime as an "uncontrollable" natural consequence of the modernization process, and seeking to bolster her theory, this present research asks whether the development of well-constructed, technically explicit criminal law can modify the modernization-crime connection. Specifically, and for illustrative purposes, we ask: <u>What is the relationship between the development of anti-counterfeiting 'Thwart Law' in</u>

colonial New York (a modernizing society facing increasing counterfeiting frauds) and Shelley's theory that crime is an inevitable hallmark of the modernization process?

A term devised for this study, 'Thwart Law' is a socially just, pragmatic, and altruistic form of statutory law. It acknowledges the weaknesses of human nature, and attempts, within the context of legislation, to prevent property crime from occuring, to 'thwart' theft or fraud before-the-fact. It is: Anticipatory legislation containing, within the text of a law, specific provisions and stipulations designed to foil or frustrate criminal behavior. To the degree that Thwart Law is effective, a costly negative effect of modernization is reduced. As will be illustrated (in Chapter V) by the anti-counterfeiting enactments of colonial New York, Thwart Law contains three kinds of thwarts -- techno-thwarts, perimeter thwarts, and penal thwarts -- all of them devised to obstruct, restrict, and suppress already experienced illegalities associated with property offenses.

Thwart Law is ideally suited for premeditated, non-violent property crimes of a developing society. It is most likely to work when it is foil-filled, specific, loophole resistant, and comprehensive, and when the public, and potential offenders, are aware of its existence. From a long-range perspective, in terms of societal development, thwart law serves the interests of all groups in a modernizing culture; however, many groups, and

individuals, are short-sighted. Professional criminals, and certain other persons, will be less likely to be deterred by thwart law than will marginal offenders, but property crime will be reduced, and the relationship between modernization and property crime will be weakened. Louise Shelley's contention that crime is a natural consequence of modernization may hold, but her claim that it is uncontrollable will be challenged.



CHAPTER IV: COMMERCE AND COUNTERFEITING IN COLONIAL NEW YORK

The connection between commerce and counterfeiting in early New York illustrates Louise Shelley's theory of a correlation between modernization and crime. The commerce supporting, anti-counterfeiting statutes of colonial New York will be used to challenge Shelley's hypothesis of an inevitable causal relationship between modernization and crime.

Colonial New York was a commercializing economy with people acclimating themselves to the use of 'hard' currency (vs. barter), and threatened by its increasing debasement. Local and maritime trade were turning the province into a bustling marketplace. 'Money' was assuming significance at the same time that it was becoming increasingly scarce. For a wide variety of individuals counterfeiting became a means of acquiring ready funds.

Colonial New York

Unlike some of the American colonies, New York did not begin with a spiritual mission. Its roots were commercial. It began as a Dutch sponsored business venture. Henry Hudson, an English explorer, sailing under the Dutch flag, discovered New York while seeking a northwest passage to China for the Dutch East India Company. The Dutch were interested in his report of rich furs to be had. They claimed the region in 1609. Trading posts were erected, and the colony was named New Netherland. Quick profit, not long range socio-economic growth, was of primary interest. The managment of the colony was entrepreneurial and expedient. "When a settlement is made purely for commercial purposes," says Langdon (1937), "the standard of management, which includes the government of the settlers, is apt to be one conducive to profit and quick turnover rather than the welfare of the people." Such was the case in early New York, making the colony an easy takeover.

In 1664 King Charles II of England captured New Netherland from the Dutch with the help of settlers who had wearied of being ruled by trading companies. Charles gave the territory to his brother, the Duke of York, to rule as a proprietary colony. The colony, and the city at the mouth of the Hudson River (New Amsterdam), were renamed New York. When the Duke of York became King James II, New York became a royal colony (Langdon, 1937).

Says Ellis (1967: 50), "New York was perhaps the most

important outpost of the British Empire between 1664 and 1775...the social pattern of New York, with its aristocracy of landlord-merchants and its strong emphasis on trade, created a society more similar to that of England than either the New England or the southern colonies."

Life in New York's towns revolved around the pursuit of individual gain through foreign and domestic commerce as well as through related activities. These towns "...were essentially economic entities - trading marts - and their differences would result from product specialization and ethnic emphasis within the population (Kammen, 1975: 281)."

According to Bridenbaugh (1971a), material greatness in the American colonies was commercial, not industrial. Those towns prospered whose sites commanded trading advantages - good harbors and an agriculturally productive countryside. New York harbor, says Bridenbaugh, was the finest on the continent.

"The economic development of New York from 1664 to 1765 is a story of an increasing population in an expanding area of farm lands, accompanied by the growth of towns where the volume of trade was swelling," says McKee, Jr. (1962: 249)."[1] Fur trading, which had been the major occupation of the Dutch at the beginning of the colony, was supplemented by several local industries which grew quickly. "Little was it realized that, not the prized luxuries of Europe, but the commonplace commodities of wheat,

[1]See Table 6, p. 256 - "Estimated Population of American Colonies: 1610 to 1780."

flour, lumber and live stock were to be the chief sources of wealth of colonial New York (1962: 251)."

According to McKee (1962), the beginnings of a sturdy surplus production of commodities available for export was evidenced as early as 1678. Wheat, fish, live stock, beans, beef, pork, butter, flour, bread, whale oil, tobacco, furs, timber, planks, and horses were being sold to near and far markets. New York and Albany were quickly becoming important trading centers, and new towns were mushrooming along the Hudson River, and elsewhere, to accomodate a growing population and a growing interest in manufacturing and marketing.

Production of surplus wheat, live stock, fish, flour, lumber, and other commodities for shipment from the countryside into the towns, and from the towns overseas, created supplementary industries such as milling, bolting, tanning, and barrel-making. Substantial amounts of whale oil, furs, tobacco, and other raw materials were sent to England in exchange for manufactured goods that were unavailable in New York, or, if available, of inferior quality. Large quantities of flour and bread were exported to the West Indies in return for rum, sugar, molasses, cocoa, cotton and 'pieces of eight' (specie which was hard to come by in colonial New York).

The rise of intercolonial and international trade led to the establishment of an energetic and influential commercial class

determined to protect and perpetuate its interests through market control, legislation, and other procedures. Weights and measures were carefully regulated. Market days and places were decreed by New York's early governors and their councils, and extended as the population increased. "Care was taken that the owners of inns, ferries, bridges and toll roads could not exploit travelers to the fairs or markets, or travelers at any other times. They were all licensed by colonial, county or town governments, and the rates which they were permitted to charge fully stated by laws (McKee, 1962: 256-257)."

In New York, as in all the commercial colonies, "...officials found it difficult to enforce market regulations prohibiting countrymen from forestalling the market by selling before the opening bell rang, or the citizens from engrossing the market by buying up provisions in advance, with the intention of raising prices (Bridenbaugh, 1971b: 82)."

The commercial pattern of colonial New York was ingrained by 1700. "The lines thereafter were worked deeper, but they were not changed. The rate of acceleration at which production increased, trade multiplied, population grew and the area of settlement expanded, was uneven, fluctuating business conditions bringing periods of prosperity and of depression (McKee, 1962: 263)."

Many of the laws of colonial New York were designed to encourage infant industries, domestic manufactures, and the

transporting of goods. Certain individuals were granted ten year monopolies to set up and run specific industries. Tariffs were instituted to protect goods produced in the colony from outside competition. Funds were authorized for the building and maintaining of highways and bridges (Colonial Laws, 1894).

Colonial New York was an emerging, trade-oriented economy antedating the Industrial Revolution. Manufactured goods were either imported or created by skilled colonial craftsmen. All kinds of articles were produced by individuals engaged in dozens of different crafts, who sold their output themselves or through merchants. Craftsmen were a substantial percentage of the population of early New York. There were cabinetmakers, metalsmiths, glovers, pewterers, printers, engravers, buttonmakers, hatmakers, shoemakers, pot makers, pipemakers, stationers, gunsmiths, ropemakers, weavers, watchmakers, pump makers...(Bridenbaugh, 1950).

In addition to those who produced and/or sold goods, there were those who provided needed services -- bricklayers, stonecutters, tailors, shopkeepers, upholsterers, barbers, carpenters, brewers, distillers, ropemakers, painters, seamstresses, carters, ... Rarely were more than a few individuals engaged in any one trade or occupation (McKee, 1962).

The products and services of colonial New York were geared to the needs of a commercializing culture. Merchants played a key

role in the economic development of the colony by providing markets for the colony's economic offerings. This put them in a position of power and influence. The typical eighteenth century merchant, in New York, and other colonies, was "vitally concerned with securing every practible concession he could," says Schlesinger (1918; 91). The merchant classes of all colonial America, "controlled a very large majority of the people throughout the provinces in the years preceeding the Revolutionary War." These were the moneymakers, the people of leadership status capable of dominating public opinion.

Kammen (1975: 161-162), claiming that New York's economy passed from "frail infancy into vigorous adolescence" in the eighteenth century, poses the question, "What were some of the signs of economic change and growth?" He answers this question by presenting a series of commercial indicators. His first indicator is the increasing "number of ships clearing the port of New York."

"Between 1714 and 1717," says Kammen, "the number of ships clearing the port of New York each year averaged 64 vessels and 4,330 tons annually, a rapid rise over earlier years. By 1721 the average had leaped to 215 ships a year totaling some 7,464 tons...Between 1708 and 1715 there was an increase of 150 percent in the number of locally owned vessels, and this renewed flow of capital into shipping would inevitably be benefical to local artisans."

An examination of the tonnage of the vessels leaving and entering New York port in the years between 1726 and 1769 (see Table 1), reveals a continuation of the trend Kammen discusses. Each year there is an increase in tonnage between New York and Great Britain/Ireland (with the overall balance of trade, in terms of tonnage, favoring Great Britain/Ireland), and between New York and other American colonies/the Caribbean (with the overall balance of trade, in terms of tonnage, favoring New York).

Moving to further indicators of commercialization in New York colony, Kammen talks about the decline of wampum as a medium of exchange, and the issuance of "...paper currency for the first time - an expedient that increased the amount of money in circulation and thereby added fluidity to the commercial life of New York (1975: 163)."

He also talks about "...a series of improvements designed to facilitate commercial expansion (1975: 169)." Among the improvements mentioned are the construction of a large bridge "...for landing and shipping merchandise," the repair of a market building, and the construction of an additional one, the grading of Broadway, and the establishment of a better location for hiring and selling slaves.

The growth of various industries (e.g., sugar refining, shipyards, tobacco conversion, trading companies, whaling, barrel making) is mentioned as indicative of commercialization. Kammen

Table 1: TONNAGE OF VESSELS LEAVING & ENTERING N.Y. 1726-1769

Destination or Origin	Year	Leaving (exports)	Entering (imports)	Total
G.B. or Ire.	1726	988	2550	3538
	1739	1615	2584	4199
	1754	3700	3125	6825
	1769	6470	5220	11690
Totals		12773	13479	26252
Amer. Col. & Caribbean	1726	6294	4943	11237
	1739	7289	6033	13322
	1754	8867	7231	16098
	1769	16744	18568	35312
Totals		39194	36775	75969

SOURCE - U.S. Bureau of the Census: Historical Statistics of the United States, Colonial Times to 1970.

One indicator of the commercial growth of colonial New York was the increasing amount of ships, and tonnage, clearing New York port. Between 1726 and 1769 we see not only an increase in tonnage transported, but the balance of trade favoring Great Britain/Ireland in its dealings with New York, but favoring New York in its dealings with other American colonies and the Caribbean.

stresses the scarcity of, and rising need for, specie to to meet the needs of the growing industries.

Media focus in colonial New York is described as commerce-centered. Publications produced in New York reveal "...that regulation of the economy was clearly a matter of paramount concern; for the pamphlets, books, and broadsides dealt heavily with agricultural production, whaling, the Indian trade, controlling pirates, regulating fees, the excise on liquors, complaints about New York City merchants and lawyers, as well as problems involving public currency and bills of credit (Kammen, 1975: 185)."

Currency Problems in Colonial New York

Kammen, and other experts on colonial New York and colonial America, emphasize New York's intensifying need for a circulating medium of exchange able to sustain the growing economy. The Anglo-French wars, and the increasingly unfavorable balance of trade between New York and England (see Table 2), were draining what little specie existed from the colony. The widening gap between exports and imports, to and from England, necessitated New York's commercial involment with other colonies and Caribbean markets. As Table 1 shows, the latter trade was significantly larger, in tonnage, than trade between New York and Great Britain/Ireland. According to Kammen, trade to the West Indies was wholly to the advantage of New York. In addition to receiving rum,

Table 2: TRADE BETWEEN NEW YORK COLONY & ENGLAND, 1697-1776
(Pound Sterling Value of Exports to and Imports from England)

Years	£ Exported	£ Imported	£ Total
1697-1700	53240	122060	175300
1701-1705	51916	129660	181576
1706-1710	48440	154395	202835
1711-1715	90215	193120	283335
1716-1720	110270	253030	363300
1721-1725	109960	294905	404865
1726-1730	115640	363070	478710
1731-1735	71255	359235	430490
1736-1740	90960	570120	661080
1741-1745	78355	618385	696740
1746-1750	95240	900910	996150
1751-1755	188280	999405	1187685
1756-1760	100310	2071180	2171490
1761-1765	396780	1713940	2110720
1766-1770	358905	1782625	2141530
1771-1776	524172	1725970	2250142
Totals	2483938	12252010	14735948

SOURCE - U.S. Bureau of the census: Historical Statistics of the United States, Colonial Times to 1970.

The increasingly unfavorable balance of trade between New York and England drained what little specie existed from New York colony.

sugar, molasses, and other goods from the West Indies, New York received needed, and current, coinage.

Discussing Britain's use of mercantilist legislation to control colonial enterprise, Shultz and Caine (1937: 25-26) contend that trade and specie restrictions prompted the colonies to experiment with paper currency: "Colonial currency difficulties during the seventeenth century...were but a prelude to the larger-scale and more serious monetary troubles of the eighteenth century. The key to the difficulty was the shortage of specie currency. Such specie as circulated in the Colonies was insufficient to give the rapidly growing American commonwealths a currency medium adequate to the needs of domestic trade...the Colonials experimented with substitutes for specie currency - and stumbled upon the expedient of paper money."

Aptheker (1959: 75), also discussing the restrictive British monetary policy in relation the colonies, says that in order to deter the amassing of capital, and the expansion of colonial America into a money economy capable of investing in manufacturing and other enterprises "England forbade the exportation to the colonies of English coins; prohibited the colonies from restraining the exportation from the colonies of foreign coinage or of bullion; illegalized the establishment of colonial mints; and regularly discouraged the emissions of bills of credit..."

Despite repressive British monetary policy, the American

colonies were determined to have some impersonal medium of exchange to facilitate their commercial endeavors. Each colony devised its own tactics, in its own time, for dealing with currency scarcity. New York, quickly moving from an agrarian, barter economy with little surplus production, to a business and cash-based culture, badly needed a currency of account, or 'lawful money,' as it was called.

Gold and silver coins minted in the Spanish and British dominions in the Western Hemisphere found their way into New York due to the favorable balance of trade between New York and the West Indies. Several kinds of coins were used in commercial exchange, with the common standard of currency in New York, and the other colonies, becoming the Spanish-milled dollar or 'piece of eight' (cut by chisel into eight bits to provide small change).

The piece of eight was an eight-unit silver coin originally minted in Mexico, that circulated in all the British colonies in the following fractional denominations:

Spanish-American Coin	Equivalent Spanish Dollar Value
8 reales	1
4 reales	1/2
2 reales	1/4
1 real	1/8
½ real	1/16

This method of "money reckoning" became firmly established in

the trading habits of New Yorkers, and other colonists, says Newman (1976: 32). "It is remarkable to realize that two hundred years after independence, Americans still calculate security price variations in eighths on many stock exchanges, notwithstanding the decimalized coinage system established in the United States in 1792."

Britain was not pleased by colonial attempts to get around the currency scarcity, but did nothing to provide debt relief for the struggling settlers. Trade between the colonies and England was transacted by bills of exchange (promissory notes, similar in concept to today's teller's checks), leaving the colonists continually in debt to England, seeking to reduce this debt by unsuccessful attempts at shrinking the import/export gap, and in constant search of new markets and new ways to get and keep specie (Newman, 1976).

To keep specie in the colony, New York (more than the other colonies) sharply overvalued the Spanish milled dollar, and other Spanish coinage, in terms of English pounds, shillings, and pence. The Spanish dollar, for example, which was worth approximately four shillings in terms of English sterling, in New York was valued at eight shillings. The thinking was that such steep overvaluation would prevent the exportation of coins arriving in the colony; and as New York overvalued the most extensively, it would amass the most specie (Shultz and Caine, 1937).

Such specie overvaluation by New York's government was unsuccessful. Inflation set in. Overvaluation of foreign coins in terms of British sterling led to a corresponding mark-up in the prices of English goods, and a subsequent depreciation in purchasing power. Frequent payments of foreign coins and bullion had to be made to England to pay for goods ordered there. To add to the problem, Britain issued a proclamation, in 1705, declaring that the Spanish dollar should not pass in any colony for more than six colonial shillings. Other foreign silver coins were to be rated proportionately, on the basis of silver content. In New York, where opposition to British monetary policy, was customary, and the Spanish dollar was valued at eight shillings, all trade stopped for about five days. No market operated, and goods and services could not be purchased for ready money. Ultimately, little value was paid to the designated maximum values; and the ignored ratings became known as Proclamation Money (Newman, 1976).

Despite a willingness to ignore British ratings, it soon became evident to commerce-oriented New York that since overvaluation of foreign coins was not helping the specie shortage, and they were forbidden from minting coin, they would have to resort to using some form of paper money that would serve as legal tender, secured by something with real value (e.g., silver), and regulated so that commerce was protected.

Paper Money in Colonial New York

It is important to stress here that the early paper money of America has the unique distinction of being the first authorized, publicly sponsored paper money issued by any government in the Western World. "Public paper money got its start in America when Massachusetts Bay in 1690 paid for a military expedition to Canada during King William's War (1689-97) with Bills of Credit...Expenses of Colonial participation in Queen Anne's War (1702-13) resulted in paper money issues in 1709 by New Hampshire, Connecticut, New Jersey, and New York...The justification for paper money was, in effect, a borrowing for a specific public expenditure rather than an issuance of a circulating medium. Since England never granted any Colony the right to issue coined money until 1773, the expression 'Bill of Credit' was retained to justify paper money issues merely as a borrowing...Each Colony found reasons to commence and continue its own emissions of paper money... (Newman, 1967: 7-8)."

England was no more enthusiastic about its colonies having paper money than it was about coinage. English governors in the American colonies were instructed to deny approval of any legislation involving paper money issues for anything except military emergencies. "The Crown also retained the right to veto any American law passed with a Governor's consent, but such action was of little practical value if the paper money had already been

put into circulation by the time the matter was being reviewed in England...New York had for many years arbitrarily emitted many of its paper money issues without waiting for the Crown's approval...When a Colonial Governor would not consent to an Act authorizing the issuance of paper money, the Colonial Assemblies were not without means to obtain such consent. In New York the Governor's salary was not paid for over one year until he approved the 1737 paper money issue (Newman, 1967: 11)."

In the early colonial era, there was no federal treasury and no provincial banks. Colonial treasuries issued and redeemed bills of credit. The acceptance of paper money depended on whether people believed they could easily exchange it for something (e.g., goods, services, bullion, specie) they wanted. Some paper money was made exchangeable at any time for specie in a colony's treasury. However, this was a theoretical right as specie was seldom available.

To provide funds to redeem paper money, taxes, duties, and excises were levied. If the collected funds were insufficient to pay the amount to be redeemed, due dates on Bills of Credit were frequently extended and tax payments deferred. All the colonies had some difficulties with their Bills of Credit, but "...New York's paper money was better managed, more stable, and less inflated than the currency of any other English colony for which adequate statistics are available (Kammen, 1975: 188)."

Before the issuance of Bills of Credit in New York, the

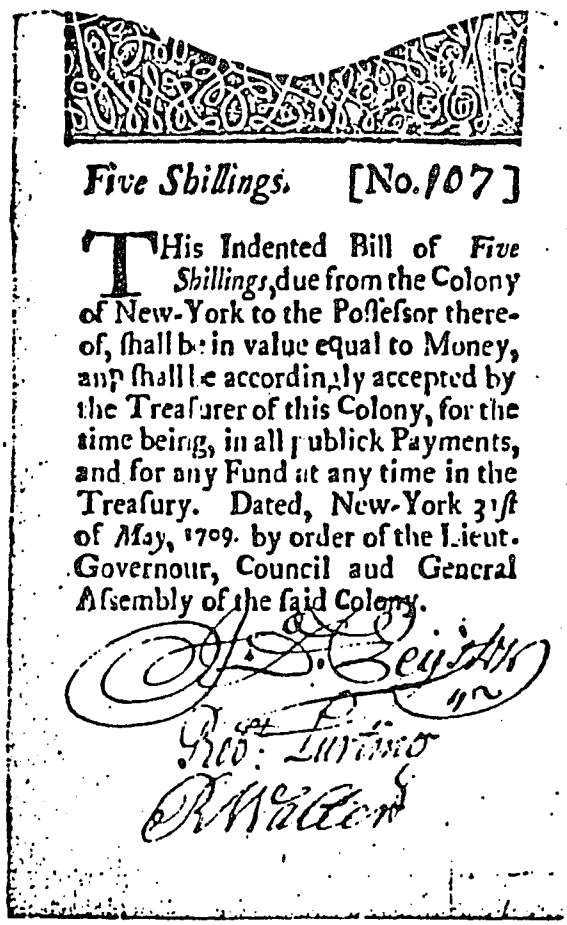
commercializing colony, in order to pay its debts and have an adequate sum of circulating money, relied on loans from a few private individuals. As trade increased, and more funds were needed to facilitate the colony's development and protect it militarily, it became necessary to issue government authorized and secured paper currency. New York issued its first Bills of Credit in 1709 (see Illustrations 1 & 2) to finance an intercolonial military expedition against Canada (Newman, 1990).

As New York colony grew, subsequent issues of Bills of Credit became necessary in order to keep trade and business flourishing. These bills were legal tender for all obligations, and the colony's government, though it preferred specie, accepted them in payment for taxes. Because the colony was conscientious in how much money it issued, and when it retired it, New York never suffered as badly from economic depressions as did many of the other colonies. It experienced "...relative prosperity and a growing proliferation of commercial interest groups. Even the prolonged recession that began in 1729 could not fully check a steady increase of economic activity (Kammen, 1975: 189)."

New York Bills of Credit, like the Bills of Credit of other colonies, were limited in number because the colonial legislature authorized each emission only to a specific sum, and set the number of each denomination to be issued. The bills were professionally printed except for the signatures of colonial

Illustration 1: New York Bill of Credit, May 31, 1709

£5,000 in indented Bills of Credit approved by the June 8, 1709 Act and receivable for taxes without interest. Printed by William Bradford from set type and with a scroll wood cut on the top for indenture. Blank backs. Four notes were printed side by side on one sheet. Signers were Johannes DePeyster, Robert Lurting, Lawrence Reade, and Robert Walter.



Five Shillings. [No. 107]

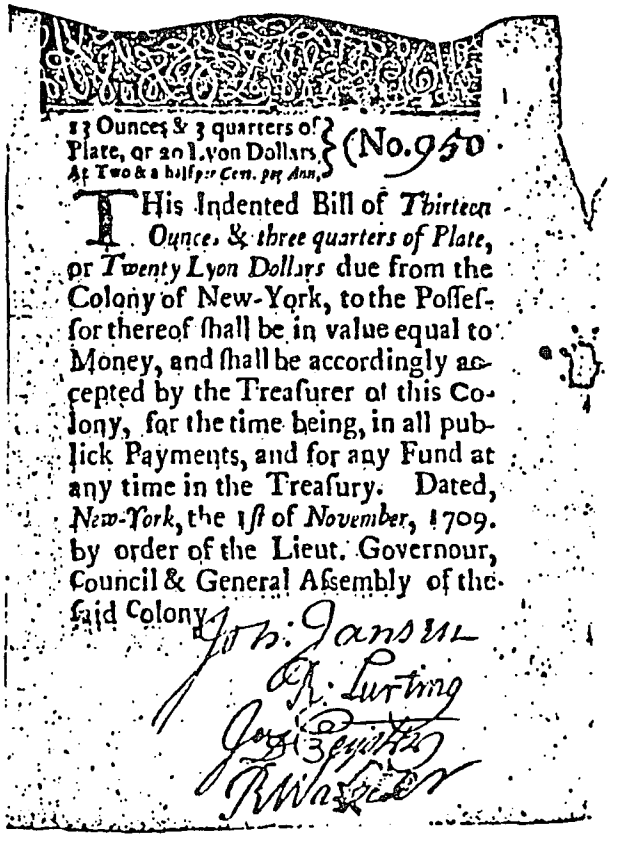
THis Indented Bill of *Five Shillings*, due from the Colony of New-York to the Poſſeſsor thereof, ſhall be in value equal to Money, and ſhall be accordingly accepted by the Treaſurer of this Colony, for the time being, in all publick Payments, and for any Fund at any time in the Treaſury. Dated, New-York 31ſt of *May*, 1709. by order of the Lieut. Governour, Council and General Aſſembly of the ſaid Colony.

5s "&" in fourth line of text (1,400)
5s "d" in first "and" is inverted (1,400)
10s Governor (500)
10s Governour (500)
20s (600)
40s (600)
£5 (400)

SOURCE - Newman, E.P. (1970). The Early Paper Money of America.

Illustration 2: New York Bill of Credit, November 1, 1709

£4,000 (14,545 "Lyon Dollars" or 10,000 ounces of Silver Plate) in indented Bills of Credit approved on Nov. 12, 1709 and receivable for taxes with 2½% interest. Interest was subsequently revoked. One "Lyon Dollar" equalled 5s6d New York money of account or 13 pennyweights, 18 grains of Silver Plate. Same general form as the previous issues. Printed by William Bradford. Same signers as the Nov. 1, 1709 Shilling Issue.



13 Ounces & 3 quarters of Plate, or 20 Lyon Dollars. (No. 950

At Two & a half p.r Cent. p.r Ann.

THis Indented Bill of *Thirteen Ounces & three quarters of Plate*, or *Twenty Lyon Dollars* due from the Colony of New-York, to the Poſſeſſor thereof ſhall be in value equal to Money, and ſhall be accordingly accepted by the Treaſurer of this Colony, for the time being, in all publick Payments, and for any Fund at any time in the Treaſury. Dated, *New-York*, the *1ſt* of *November*, 1709. by order of the Lieut. Governour, Council & General Aſſembly of the ſaid Colony

Jon. Jansen
R. Lurting
Jos. Sequeira
R. Walter

2 Ounces, 15 Pennyweights (4 Lyon dollars). GOVERNOR [169]
2 Ounces, 15 Pennyweights (4 Lyon dollars). GOVERNOUR [168]
5 Ounces, 10 Pennyweights (8 Lyon dollars) [300]
11 Ounces (16 Lyon dollars) [300]
13 Ounces, 15 Pennyweights (20 Lyon dollars) [300]

SOURCE - Newman, E.P. (1970). The Early Paper Money of America.

officials, and sequential hand numbering. They were denominated using English notation (see Illustrations 1 & 2). New York Bills of Credit were widely accepted by businessmen, and the general population, in neighboring colonies, as well as in New York, and they circulated freely alongside the more cumbersome gold and silver coins.

Eighteenth century New York Bills of Credit were more fully backed than is paper money today (which is no longer backed by anything tangible). They could be redeemed for specie when, or if, specie was available in the colonial treasury. The real backing for paper money, though, is not whether it is backed, or redeemable. "The ultimate backing for paper money is psychological," explains Newman (1976: 97)). "Can I, accepting it in payment, be assured that I can use it freely in making payment? For the colonist from about 1720 through 1775 the answer to that question was regularly 'yes.'...One can deduce the widespread acceptability of bills of credit from the knowledge they did circulate widely outside the colony that issued them."

The bills of New York, New Jersey, Delaware, and Pennsylvania circulated amongst each other, within all the New England colonies, and south into the Chesapeake Bay area; and they were preferred over coin currency. The value of any given coin was uncertain, explains Newman. "Not only did a gold or silver coin bear no indication of its value in colonial currency, but its

value depended on its weight and condition, factors not easily measured by individual colonists (Newman, 1976: 97)."

Considerable planning and thought went into the nature of colonial paper currency. The best available handmade rag (a linen-cotton combination) paper was used to print it, as rag could withstand dirt and wear. Initially the paper stock was supplied by Stationers in England. With the development of papermaking in America, local industry was favored. New York's bills, though thin, were laminated for additional durability. The faces of most of them were white, the backs dark brown.

Bill indenture, though it ceased in New York within the first quarter of the eighteenth century (despite the continuing use of the expression "indented bill" in legislation authorizing currency emissions), was tried as a means to prevent counterfeit bills of credit from being redeemed. Explaining the process by which bills were indented, and accounted for, Newman (1967: 21) says, "To prevent counterfeits and altered bills from being redeemed and to audit the number issued, many series of bills were bound into pads or books with the denomination and part of the design intended to be retained on a stub. The same number was written on the stub and on the bill for identification purposes. The bills were cut off the stubs in an uneven manner with a knife or scissors so that on redemption they could be test fitted and verified."

Though a clever concept, indenture became recognized as

impractical because of the work involved in double numbering and cutting, and because the bills became worn on the indented ends, invalidating the purpose of indenture.

Manual signing of New York's (and other colonies') bills of credit (see Illustrations 1 & 2) was done in ink as a control against overissuance, and as a protection against counterfeiting. The number of bills issued, and the number of signers, depended on the authorizing legislation. There were thirty authorized emissions between 1709 and the Revolutionary War. Most of these emissions were signed by two to six town leaders, who quite likely used helpers when the number of bills to be signed ran well into the thousands. Says Newman (1967: 22), "Some authorized signers must have permitted others to sign for them, since the same name is sometimes found in different handwriting."

New York bills were consecutively hand numbered (each denomination beginning with the number 1), with numbering appearing on a bill's top, bottom, or side. Numbers usually verified legislation statistics as to the amount of each denomination of each issue. "There are situations where the number issued seems to have actually exceeded the number authorized," says Newman (1967: 23), "This might have taken place in emergencies or in situations where the bills were signed and numbered in anticipation of enabling legislation which was never passed because of economic changes or depreciation."

The Meaning of Money in a Modernizing Culture

As New York developed commercially, money, and currency stabilization, increased in importance. The development of a money economy in seventeenth century New York was improvisational and pragmatic. Though the settlers wanted their medium of exchange to perform its function in daily transactions, there was no official concern with the details of currency creation, nor with the establishment of a sound monetary system. Barter and coinage were used; as long as either was recognized as acceptable, little attention was paid to the concept of money.

This situation changed dramatically in the eighteenth century. Prosperous merchants, who traded intercolonially and overseas, needed a credible currency, and were fearful of any situations that might debase their money. Ordinary citizens needed a sound currency in order to transact their daily dealings. Money began to assume both economic and social significance.

Discussing the role of money in a modernizing culture, Simmel (1950) explains that money is an impersonal standard by which to judge people and progress, and is of particular interest to those in a commercializing economy (such as was colonial New York). "Only money economy has filled the days of so many people with weighing, calculating, with numerical determinations, with a reduction of qualitative values to quantitative ones. Through the calculative nature of money a new precision...has been brought about...Money, with all its colorlessness and indifference,

becomes the common denominator of all values; irreparably it hollows out the core of things, their individuality, their specific value, and their incomparability (1950: 412-414)."

Given New York's changing economic structure, an increase in the importance of money, and the change in focus and values which Simmel links to the modernization process, it is not surprising that the creation of money was accompanied by the development of counterfeiting. When money is significant in a culture those who can not acquire it legally are likely to attempt to acquire it illegally (Merton, 1957).

The Second Oldest Profession

Counterfeiting in all countries is as old as money itself (Scott, 1957). It began shortly after the first coin changed hands in the marketplace of Lydia (an ancient kingdom in West Asia Minor) in 660 B.C. In addition to historic accounts of counterfeiting activity hundreds of years B.C., anthropologists observing primitive tribes which still use shells as currency have found tribesmen to be wary of counterfeiters within their communities.

Glaser (1968:1) who calls counterfeiting "...the second oldest profession," claims that "...as soon as human beings became sufficiently social to have any sort of commercial intercourse, there was a shyster somewhere trying to pass off an inferior article as one of full value." The "shyster" came from all levels

of society. Metalsmiths dabbled in this illegal art form, as did European royalty, doctors, printers, deacons, and others who had access to the necessary technology and materials.

Primitive and agrarian economies frequently operate on a barter basis, with individuals trading what they have for what they need. If an individual needs a particular item, but has nothing to offer in exchange, or nothing that anyone wants, he is out of luck. This situation is the foundation of currency as a means of exchange. Articles with a fixed value (e.g., beads, wampum, shells, livestock, precious metals) are used by a trader to acquire goods, services, or a social position which is valuable to him. The more commercial a society becomes, the more valuable currency becomes, and the greater the temptation to counterfeit items (formal money included) with a fixed value (Glaser, 1968).

As soon as trade began in the American colonies counterfeiting began to flourish alongside the agrarian barter economy (Hoyt, 1977). It was one of several economic frauds the settlers practiced in order to make their lives more comfortable. Discussing trade, currency, and counterfeiting in the context of presenting pieces of America's past, Dwyer (1989) offers no scholarly interpretation or judgement, but rather the following colorful sketch which, though based on economic immorality, is insightful, intriguing, and amusing.

Counterfeit Wampum. Few early colonists brought much money

with them to the New World. They didn't think they'd need it. And they were right; the natives had their own currency - wampum. Made of shell beads by coastal Indians, six-foot "fathoms" and seven-inch "hands" (beaded wall hangings) were accepted by such inland tribes as the Iroquois in exchange for furs. Wampum was declared legal currency in many English and Dutch colonies.

Before long the Indians began dyeing white beads with huckleberry juice and passing them off to the unsophisticated settlers as the more valuable dark ones (made from the hearts of quahog clamshells). Eventually the colonists learned to spit on the beads to test them, as Indians did. Then a man named William Pynchon turned the tables. Having acquired bushels of loose wampum beads, he hired the women and children of the Massachusetts Bay to string them together and flooded the market, inflating the currency. Finally, glass beads, fabricated at first in England and later in the colonies, brought about the collapse of the wampum economy (1989: 201).

Wampam, and 'country pay' (farm products and commodities) became subordinated to metallic and paper currency as the colonial economy expanded. Although bartering continued during the entire colonial period, especially in rural areas, the demand for coins and paper money progressively increased to meet the requirements of foreign and domestic commerce. The growing need for an objective, formal medium of exchange was accompanied by an alluring opportunity to produce fakes due to a revolution in the British currency form.

Beginning in the mid-seventeenth century, currency became representative rather than 'real.' From the 1660s on a large portion of the currency circulating in Britain and America did not contain its intrinsic value. This was a boon for counterfeiters; it created a tempting business possibility. Coin counterfeiters

no longer had to worry about the risk of using base metals in imitating genuine pieces, as the genuine pieces themselves now contained base metals. Additionally, with the advent of paper money, the counterfeiter could use materials intrinsically equal to what the genuine issuer was using and make profits of thousands of times his investment (Glaser, 1968).

According to Scott (1957: 6), "When paper bills of credit were emitted, nothing was easier than to take or send some samples to England, to Amsterdam, to Germany, and especially to Ireland, and have plates made for imitating them or actual counterfeits struck off." In addition to the generally superior skills of these plate makers, a great advantage in having bills or plates made in Europe was that "...the act was apparently not punishable there and the chances of detection were remote in any event."

The growth of commerce and mobility in colonial America aided the counterfeiter in his dealings in Europe and America. Not only could samples be taken or sent from America to Europe with relative ease, but once struck, the counterfeits could be passed off many miles away. Linking counterfeiting to horsetheft, Brown (1969: 60-61) contends, "Horsethieves commonly organized into gangs, stealing horses in one area and disposing of them hundreds of miles away - preferably across state lines. For obvious reasons, counterfeiting operations were best carried on in the same way, and it was simple to combine the two occupations."

Counterfeiting activity in America also was spurred by immigration. Convicted British counterfeiters transported to the colonies for having presented too many specimens of their craft to the British public resumed their illegal craft in the colonies, frquently setting up shop immediately upon their arrival on American shores. However, stresses Glaser (1968), counterfeiting was not just a craft of convicts and criminals, but also an activity that served to supply our colonial merchants with the currency needed to expand their businesses during tight money periods.

Counterfeiting in Colonial New York

Because the towns of New York were commercial marketplaces with goods and services being bought and sold daily, currency was particularly important in the colony. Though not dead as a means of payment, barter was strongly shunned in favor of monetary transactions; but cash was in short supply.

By 1680 colonists in New York had begun manufacturing silver pieces which were imitations of those issued by the Massachusetts Bay Province (until 1682 when English regulations forbade colonial coinage). In 1683 the governor and council of New York City issued a warrant for the apprehension of passers of false coin, claiming that counterfeit Boston, Spanish, and other currencies were circulating in the City. "New York was in those days an open city, a haven for all sorts of rogues, particularly pirates," says

Glaser (1968: 12). The Earl of Bellmont eventually was sent from Britain to clean things up in New York, but in 1699 he wrote back home that he could not find a trustworthy man, a man capable of honest business dealings (Glaser, 1968).

Currency scarcities always existed in New York, with wars and British monetary and trade restrictions aggravating the situation. This was especially true for businessmen who needed available capital to operate, and feared losing their enterprises. Britain felt that New Yorkers, like other colonists, were overreacting to the currency scarcity. From the Crown's perspective, some payment was being made to New York in compensation for its military services in the various Anglo-French wars, overseas investment was occurring in the colony, and New York was allowed generous credit terms in order to relieve its debt problems resulting from an unfavorable balance of trade. According to Shultz and Caine (1937), this was not enough. Payment in compensation for military services did little to relieve the currency scarcity, overseas investment was minimal, and an expansion of English credit merely avoided the complete disruption of Anglo-Colonial trade.

As the money supply decreased, ounterfeiting activity increased, ultimately hurting an already fragile economy. Says Ellis (1967: 83):

> Businessmen suffered from a lack of commercial banks and from an unstable currency. Barter took the place of money in the

countryside...the situation was further complicated by the adverse balance of trade with Great Britain, which drained off the gold and silver earned in the West Indies. Foreign coins circulated freely in New York but they were often debased and clipped. The province of New York was forced to issue paper money in 1709 to finance the expedition against Canada. A half century later more bills of credit were used to pay for military supplies during the French and Indian War...When the British government banned the issue of paper money by the colonies in 1764, New York merchants were angered and alarmed, feeling there was not enough specie available for the needs of business.

Over the course of the eighteenth century New York saw the decline of coinage as a major medium of exchange, the birth of paper currency, and the reemergence of coin currency, as counterfeited bills of credit increasingly entered into circulation. Discussing this cycle, Shultz and Caine (1937: 27) explain, "Toward the close of the seventeenth century, the clipping and other debasings of the Colonial metallic currency had been a sharp problem. Complaints of these practices continued to be heard during the early years of the following century. Then both practice and complaints died away. The milled Spanish currency that entered the Seaboard Colonies at this time did not lend itself to clipping - the fraud was too discernable. Moreover, as the century progressed, paper currency tended to supplant even the Spanish metallic money as a medium of exchange, and such coins as circulated were likely to be examined closely. With exchange ratios stated in terms of weight rather than coins...a suspicious-looking coin was immediately put to the test of the scales."

Shultz and Caine, focusing on the subsequent depreciation of paper currency, and renewed preference for specie in intercolonial commerce, go on to say, "The home government did not look with favor upon the currency experiments of the Seaboard Colonies...But the English authorities were not blind to the Colonial side of the picture...Specie currency in sufficient quantities to oil the channels of commerce was lacking...To permit them to print paper money was cheaper and simpler than to provide them with an adequate metallic currency...During the first half of the eighteenth century, the home government made no attempt to prohibit the Colonial paper currencies...Paper money, particularly as it tended to depreciate, circulated at a velocity much greater than that of the specie money...Every holder of such currency had perforce to spend it as soon as possible if it was not to depreciate on his hands...By the middle of the century, the circulation of each colony's paper was pretty well restricted to its own boundaries. Specie or bills of exchange on England were the media of payment in inter-colony trading (1937: 33-37)."

Colonial paper currency depreciated because too often it was sharply discounted to motivate citizens to use it, overissued, not retired, and easily and frequently counterfeited, all of which led to severe misuse of money and rapid inflation. Weak and counterfeited bills enabled businessmen and merchants to keep their businesses afloat. In a feedback loop, commerce created an

environment receptive to counterfeiting; and counterfeiting promoted commerce, which then required additional money to sustain it. The more commerce transacted, the greater the need for paper currency, the more attractive counterfeiting became, and the greater the number of counterfeiting indictments (see Figures 1 & 2). Long-range commerce was threatened. "Counterfeiting in the colonial period both by individuals and increasingly by organized and co-operating gangs posed a constant threat to the credit and commerce of the provinces," says Scott (1957: foreword).

Discussing crime and criminals in New York and other eighteenth century seaboard cities, Bridenbaugh (1971b: 111-112) says, "...yet far greater enemies to society, were the silent and unobtrusive men and women who counterfeited money. Privately manufactured provincial currencies turned up in every city and unwary shopkeepers frequently found their tills full of bad bills of credit...tens of thousands of pounds worth of bogus bills must have passed into circulation in the cities, not only harming the defrauded individuals who accepted them but also severely injuring provincial currency systems."

Milton Friedman (1992) stresses that uncontrolled money growth, whether through legitimate or illegitimate currency issues, causes inflation, which ultimately debilitates business and commerce. Looking at the effects of money mischief throughout history, the Nobel-laureate economist concludes that only constant

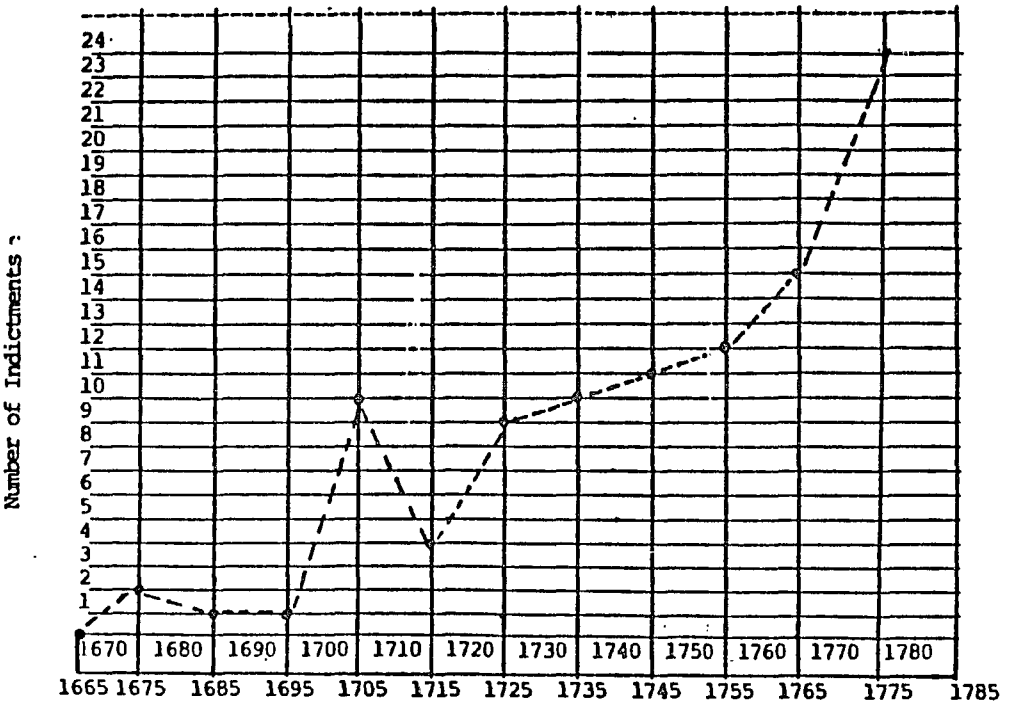


Figure 1: COUNTERFEITING INDICTMENTS IN N.Y.S.
(Grouped in 10 year periods, 1671-1780.)

SOURCES - Trial court records of the N.Y. Quarter Sessions (1691-1775) and the Supreme Court of Judicature (1691-1739, 1750 - 1776). N.Y. Colonial Manuscripts.

Time Period	Number of Indictments
1671-1680	2
1681-1690	1
1691-1700	1
1701-1710	10
1711-1720	4
1721-1730	9
1731-1740	10
1741-1750	11
1751-1760	12
1761-1770	15
1771-1780	24*
Total	99

As N.Y. commercialized, counterfeiting indictments increased. Money was scarce at a time it was needed to foster commerce. Counterfeiting became an alluring illegality that would eventually endanger the economic growth of the colony.

* Colonial records end in 1776 at outbreak of Revolutionary War.

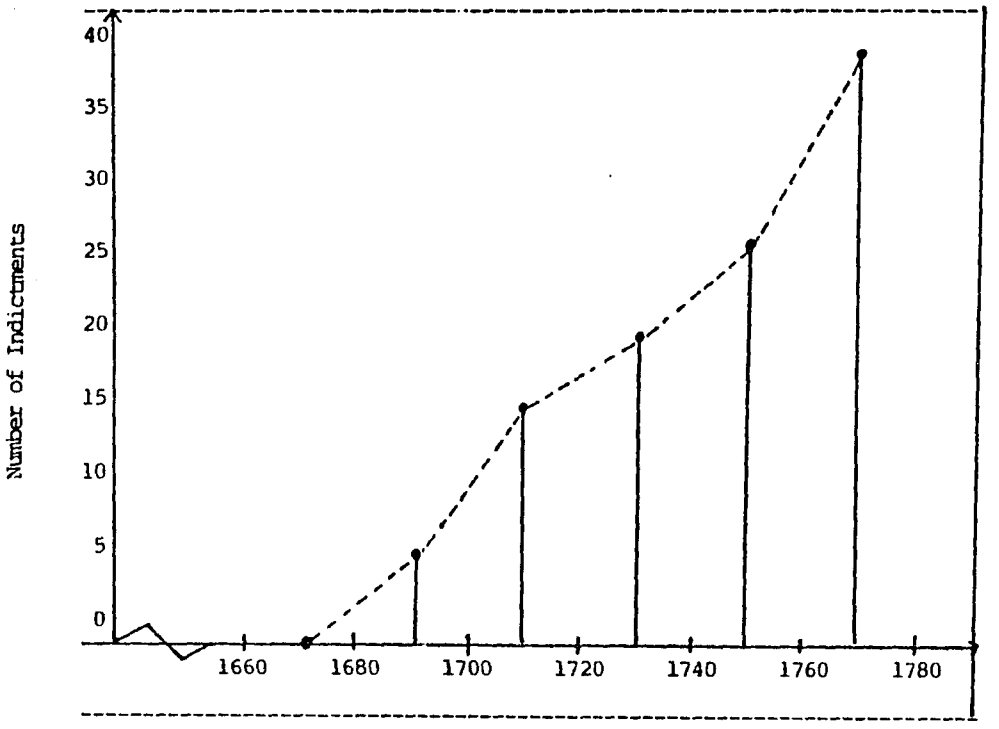


Figure 2: COUNTERFEITING INDICTMENTS IN N.Y.S.
(Grouped in 20 year periods, 1660-1779)

Time Period	Number of Indictments
1660-1679	0
1680-1699	4
1700-1719	13
1720-1739	18
1740-1759	25
1760-1779	39
Total	99

By collapsing Figure 1 into twenty year periods we see a steep, non interrupted increase in counterfeiting indictments as N.Y. colony commercialized.

surveillance, and monetary reform, despite undesirable side effects, can counter economy-endangering currency practices. New York, unlike many of the other American colonies, engaged in constant surveillance, and tried to exercise moderation and caution in its currency policies.

Discounting was stopped early on in New York. Attempts were made to retire bills of credit as quickly as possible. Emissions were not excessive. Legislation was enacted to deter and punish several variants of counterfeiting activity. Newspapers informed readers of the dangers posed by counterfeiting activity, and of what bills to beware of.

Scott (1953) stresses that New York's newspapers were arduous in their efforts to suppress counterfeiting. He claims the colony's currency problems relating to counterfeiting would have been even worse than they were, were it not for the published warnings of newspaper and bulletin publishers. The public, he says, was continually cautioned about accepting false bills and coins, and alerted to the harmful effects of counterfeiting on fair traders, commerce, and ordinary citizens. Detailed instructions were given on how to tell false from real, or authorized, currency.

In addition to feeling genuine concern about New York's currency problems, it is possible that New York's newspaper publishers were personally motivated to control counterfeiting

fraud as they were the same individuals (William Bradford, John Zenger, James Parker, William Weyman, John Holt, Hugh Gaine) who printed the colony's bills of credit. (See Table 3 for a list of the colony's many newspapers and their publishers).

Articles often told of who was engaging in coin and/or paper counterfeiting, how they were perpetrating their crime, and what cautions could be taken... On October 2, 1752, for example, the New York Gazette, revived in Weekly Post Boy, warned its readers about false Pieces of Eight circulating in New York City as "...a New Jersey man, tall and pockfretten, paid ten pieces of eight in a shop in this city; and on Friday it was discovered that three of them were counterfeited: The bulk, impression and letters are so well imitated, that one would scarcely suspect them; they ring almost as other Pieces of Eight; the colour nearly but not quite the same; but on cutting they are soft almost as pewter, and on weighting, they are 2s. lighter than Pieces of Eight; Which are the only sure means we know of discovering them..."

The New York Gazette, or Weekly Post Boy reported on September 16, 1754, "False Three Pound Bills are again creeping in amongst us: They are dated the 10th of May, 1746, and are signed by Paul Richard, Cornelius, Vanhorne, Robert Livingston, junior." The piece then includes five things the public should watch out for: "...1st. The two barrels in the false bills, on each side of the vanes of the wind-mill, appear not to be full hooped, but a

Table 3: Newspapers of Colonial New York

Published in New York City unless otherwise indicated

New York Gazette Nov. 8, 1725–Nov. 19, 1744	William Bradford; with Henry de Foreest from 1741 or 1743
New York Weekly Journal Nov. 5, 1733–March 18, 1751	John Peter Zenger; later his widow; then his son
New York Weekly Post Boy Jan. 4, 1743–Jan. 12, 1747	James Parker
New York Gazette, revived in Weekly Post Boy Jan. 19, 1747–Dec. 25, 1752	James Parker
New York Gazette, or Weekly Post Boy Jan. 1, 1753–Jan. 29, 1759 Feb. 5, 1759 Feb. 12–March 12, 1759	James Parker and William Weyman James Parker Samuel Parker
Parker's New York Gazette, or Weekly Post Boy March 19–Dec. 3, 1759 Dec. 10, 1759–July 24, 1760 July 31, 1760–April 29, 1762	Samuel Parker Printer omitted James Parker and Company [John Holt]
New York Gazette, or Weekly Post Boy May 6, 1762–Oct. 9, 1766 Oct. 16, 1766–July 2, 1770 July 9–Aug. 6, 1770 Aug. 13, 1770–Aug. 13, 1773 Aug. 20, 1773–Sept. 1773	John Holt James Parker Printer omitted Samuel Inslee and Anthony Car Samuel F. Parker and John Anderson
New York Evening Post Nov. 26, 1744–March 30, 1752	Henry de Foreest
New York Mercury Aug. 3, 1752–Jan. 25, 1768	Hugh Gaine
New York Gazette, and Weekly Mercury Feb. 1, 1768–Nov. 10, 1783 Sept. 21–Nov. 2, 1776 in Newark, N. J.: Sept. 30–Nov. 4 also by Ambrose Serle in New York	Hugh Gaine
Independent Reflector Nov. 30, 1752–Nov. 22, 1753	James Parker William Livingston, ed.
Occasional Reverberator Sept. 7–Oct. 5, 1753	James Parker
Plebeian Aug. 14–Sept. 11, 1754	Hugh Gaine
Instructor March 6, 1755	James Parker and William Weyman
John Englishman April 9–July 5, 1755	James Parker and William Weyman
Weyman's New York Gazette Feb. 16–Aug. 6, 1759	William Weyman
New York Gazette Aug. 13, 1759–Dec. 28. 1767	William Weyman
American Chronicle March 20–July 22, 1762	Samuel Farley
New York Pacquet July 11–Aug. 22, 1763	Benjamin Mecom
New York Journal, or General Advertiser May 29, 1766; Oct. 16, 1766–Aug. 29, 1776 —— (at Kingston) July 7–Oct. 13, 1777 —— (at Poughkeepsie) May 11, 1778–Nov. 6, 1780; July 30, 1781–Jan. 6, 1782	John Holt John Holt John Holt

SOURCE - Flick, A.C. (1962). History of the State of New York (Vol. II).

blank space is left in the middle of each barrel; whereas in the true bills, barrels appear to be full hooped. 2nd. The top of Figure 7 in 1746, is somewhat higher in the false bills than the other figures; In the true ones they are even....."

On July 6, 1761, in response to the arrest of several infamous men operating outside of New York colony with New York bills of credit, and in an attempt to deter similar out-of-colony counterfeiting acts, Weyman's New York Gazette prominently printed the text of a December 16, 1737 law, which made it a non-pardonable capital offense to make, alter, or pass New York bills of credit outside (as well as inside) the boundaries of New York.

Frequent articles appeared discussing the capture, indictment, trial, and execution of various counterfeiters, again, written with the intention of discouraging future counterfeiting violations. Newspaper publishers continued to use their professional expertise as authorized currency printers to tell readers how to detect new bogus bills in circulation.

It is difficult to determine the extent to which newspaper diligence deterred counterfeiting, or assisted individuals in detecting, refusing, and reporting bogus coins or bills. Newspaper reportage raised public and political awareness of what increasingly came to be regarded as a serious threat to political and commercial development. New anti-counterfeiting legislation

was enacted frequently, and attempts were made at enforcement. Proclamations were issued and published that offered substantial rewards for the apprehension of notorious counterfeiters and members of counterfeiting gangs.

Minutes of the New York Court of Quarter Sessions show that more and more throughout the colonial period larger denominations and amounts of stopped counterfeit bills were brought into court and burned. The record of November 2, 1720, which is similar to several that appear in the court records, reads as follows:

> Jacobus Van Cortlandt, esq., late mayor of the city brought into court a counterfeit four pound paper bill and a counterfeit ten shilling bill of credit which were lodged with him as counterfeits during his mayorality. And also John Cruger, esq. brought into court one counterfeit bill of eight pounds No. 4204. One counterfeit bill of five pounds No. 1031. One other counterfeit bill of four pounds No. 5207. One other counterfeit bill of eight pounds No. 2039. And one other counterfeit bill of six pounds No. 3940 which said bills were brought to the said John Cruger, esq. as counterfeits, but that upon examination he cound not discover the persons who had counterfeited the same. It is therefore ordered by the court that the said false or counterfeited bills be immediately burned and destroyed and the same false or counterfeit bills were burned and destroyed in open court accordingly (Ms. Mins. NYCQS, Book 2: 1694-1731, p. 385 -- see Illustration 3).

Legislation, newspaper reports, and court records and minutes, such as the above, inform us that counterfeiting occurred, was viewed as a socioeconomic threat, and was officially noted. They do not provide a means of estimating the statistical degree of the fraud. Wickham and Daily (1982) introduce their book on white-collar crime (which includes counterfeiting fraud) with a discussion of the difficulty involved in obtaining accurate

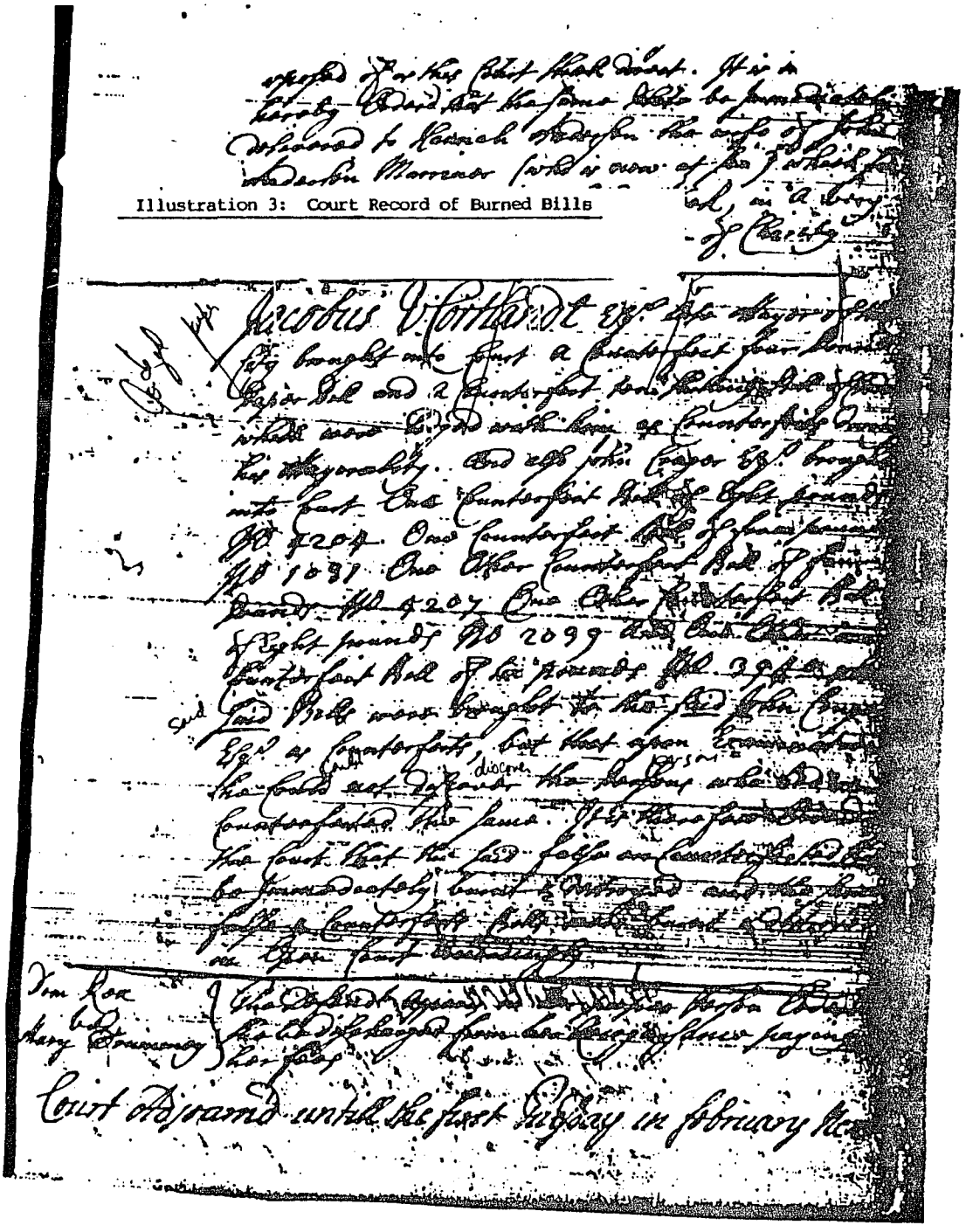


Illustration 3: Court Record of Burned Bills

SOURCE - Ms. Minutes, NYCQS, Book 2: 1694-1731.

estimates of the financial extent of all white-collar crime, or of any specific offense, now, or at any point in history.

Bonn (1989) explains that victims of white-collar crime often are completely unaware of their victimization, "If only a minority of white collar offenses is ever detected or reported," says Bonn, "we have no way of generalizing from this minority of offenses to the larger universe, that is (a) no way of knowing the ratio of reported to total offenses or (b) whether the reported offenses are in any way representative of the larger totality (1989: 6)."

Court records of colonial New York show that the number of counterfeiting indictments (see Figures 1 & 2) increased throughout the colonial period, but, as Bonn suggests, we have no way of knowing what this means in terms of how many people actually engaged in counterfeiting acts, or how much money was involved. There is no way to estimate the number of counterfeiting acts, or attempted counterfeiting acts, that occurred in the seventeenth and eighteenth centuries, or how many occur today. Nor can we know what percentage of reported cases ever came to trial, or what the relationship was between amounts admitted as evidence in trial cases, and total amounts counterfeited, by defendants, or by the general population.

One thing we can be certain of is that the overall rate of counterfeiting indictments (see Table 4) did not go up. This

Table 4: RATE OF COUNTERFEITING INDICTMENTS IN N.Y.S., 1671-1780

Year	Coining	Paper	Population	Rate - coining	Rate - paper	Rate - total
1671-1680	2	0	9830	20.35	0.00	20.35
1681-1690	1	0	13909	7.19	0.00	7.19
1691-1700	1	0	19107	5.23	0.00	5.23
1701-1710	10	0	21625	46.24	0.00	46.24
1711-1720	1	3	36919	2.71	8.13	10.83
1721-1730	3	6	48594	6.17	12.35	18.52
1731-1740	3	7	63665	4.71	11.00	15.71
1741-1750	4	7	76696	5.21	9.13	14.34
1751-1760	6	6	117138	5.12	5.12	10.24
1761-1770	2	13	162920	1.23	7.98	9.21
1771-1780	5	19	210541	2.37	9.02	11.40
Totals	38	61				

SOURCES - Trial court records of the N.Y. Quarter Sessions (1691-1775) and the Supreme Court of Judicature (1691-1739, 1750 - 1776). N.Y. Colonial Manuscripts.
U.S. Bureau of the Census: Historical Statistics of the U.S., Colonial Times to 1970.

NOTE - Rate = per 100,000 population

Though the supplied data support the conclusion that the overall rate of counterfeiting indictments did not increase, it must be pointed out that the indictment numbers are really too small for any definitive conclusion about rates.

does not tell us much, though. We are looking at a relatively small number of indictments (99), and a substantially increasing population. If we just look at the period between 1691 and 1710, which contained the smallest population jump, we see a large rate (46.24) of indictments compared to other years. This could mean that if there were little population growth throughout colonial New York's development, we might see an increasing rate of indictments. It could also mean that coiners were less sophisticated than paper counterfeiters in crafting and marketing their work (all 10 indictments were for coining); or that the criminal justice system was more adept at catching coiners than it was at catching paper counterfeiters; or that counterfeiting became so sophisticated that only the most experienced professionals could distinguish between real and imitation money. It might even mean that the enacted anti-counterfeiting legislation was so effective that it deterred would-be offenders. Any of these things are possible; none of them can be proven.

Though we can not conjecture regarding numbers, as New York commercialized, counterfeiting came to be considered a serious problem "even by those businessmen, and others, who had themselves participated in it, and were still doing so...Other socially expensive (what we today term) white-collar frauds were being perpetrated, but received far less attention (Scott, 1991)."

For example, army generals, intercolonial military leaders,

and enlisted men, were tremendous expense account padders and misusers of public funds. As New York was involved in four major intercolonial wars (King William's War-1689-1697, Queen Anne's War-1702-1713, King George's War-1744-1748, French & Indian War-1756-1763) during its colonial period, substantial deficits accrued due to military fraud alone. Yet, little focus was directed to such money mismanagement. The public became increasingly aware of the dangers of counterfeiting, but apparently believed war to be a necessary expense, and did not delve much into how military funds were allotted, not during the colonial years, or even during the Revolutionary War (Scott, 1991).

Kitman (1970), analyzing George Washington's expense account, and mishandling of military funds, says, "There has been a tendency on the part of modern historians to belittle Washington's accomplishments in war and peace. But expense account writing is one area in which the man was second to none (1970: 16)." Kitman concludes that if military leaders today misused funds as Washington did, our economy could not sustain a military:

> The genius of Washington in making...charges, for seeking the enemy and then running away from him, has never been fully appreciated...If Washington's leadership in bookkeeping tactics had been followed, with the added democratic touch of allowing enlisted men as well as generals to hand in chits to the paymaster after every patrol...(t)he cost of running an army would be so prohibitive that not even a country with our resources could wage war without bankrupting itself...the quality of (Washington's) mind...compares favorably to the average big city banker of today (1970: 33).

Counterfeiting was viewed as a more serious societal threat than was military fraud, not only because it is more serious than "ordinary" corruption, but also because it was a crime of opportunity for any citizen. Common folk engaged in it, and were able to master aspects of the art with relative ease.

Mary Peck Butterworth, for example, was a colonial housewife, and mother of seven, who used the technology of her day to combine the craft of moneymaking with her household chores. Needing none of the skills or tools of a plate maker, printer, or engraver, Butterworth devised a system as easy as ironing. She would place a dampened piece of starched muslin over the legal bill she wished to copy and run a hot iron lightly over the cloth to get a negative impression of the bill onto the muslin. Then she put this negative impression over a blank piece of paper and ironed it on the paper's surface. Finally, using a fine quill pen, she traced over the impression of the bill-to-be. The cloth printing plate was then burned to destroy any possible incriminating evidence.

Mrs. Butterworth's home business, though Massachusetts based, grew to include the bills of several American colonies. To meet the increased demand for her product, she trained others, including her town's deputy sheriff, to help produce and market the notes, which were sold at half of face value. She and her gang were tried, but not convicted. Butterworth never viewed herself as

a criminal, and lived to be a cheerful, inspiring eighty-nine years old (Rochette, 1986).

Though Butterworth was cheerful, long-lived, and esteemed by many who envied her moneymaking capacity, growing numbers of businessmen, merchants, and lawmakers came to believe that counterfeiting frauds, like the ones she, and others, perpetrated had to be legally suppressed, lest commercial development be severely hampered. Legislation was enacted by the various colonies criminalizing several variants of counterfeiting fraud.

Conclusion - A Concurrent Increase and Interaction

This chapter has narrowed down discussion of the relationship between modernization and crime to one aspect of modernization (commercialization), a single crime (counterfeiting), and a specific setting (colonial New York). There is no direct causal connection between commercialization and counterfeiting. Rather, we find a concurrent increase, and interaction, of both as the colony moves from its earliest stages towards the Revolutionary War. From the late seventeenth century, and through the eighteenth century, we see a rise in commerce, a rise in counterfeiting, and an ongoing interplay between the two.

Commercialization turned colonial New York from a barter to a cash economy. Hard currency was scarce, yet needed to maintain survival and fuel continued commercialization efforts. Counterfeiting, over the short term, seemed an attractive solution

to a wide variety of people. Fraudulent money provided purchasing power and pumped the wheels of commerce. However, an increase in commerce created the desire for more consumption, more capital to sustain the growing economy -- and more counterfeit currency.

Wars, and an increasingly unfavorable balance of trade with England, were draining what little specie existed from New York colony. Restrictive British monetary policy illegalized the establishment of colonial mints and discouraged the issuance of bills of credit.

Limited numbers of bills of credit were printed, and circulated as paper currency. Coinage minted in the West Indies found its way into New York due to the favorable balance of trade between New York and the West Indies. Still, there was not enough 'lawful money' in circulation for a society quickly moving from an agrarian barter economy to a commercial cash-based culture. Not surprisingly, in this increasingly mobile, heterogenous culture populated by merchants, metalsmiths and engravers eager to survive in the New World, counterfeiting fraud alarmed many.

Whereas initially the use of illegitimate currency may have aided commercialization, it soon threatened economic growth, and prompted legislation aimed at protecting commerce by stabilizing the colony's depreciating currency. Lawmakers worked to weaken the growth of crime related to modernization by passing acts aimed at thwarting old and new forms of counterfeiting fraud.

CHAPTER V: THE ANTI-COUNTERFEITING LAWS OF COLONIAL NEW YORK

Along with the growth of commerce and counterfeiting in early New York was the evolution of anti-counterfeiting legislation. A series of laws was enacted to thwart counterfeiting frauds that could debase New York currency and damage the colony's commercialization efforts. These laws, when penciled in with details of New York's colonial period, give us some insight into a newly developing economy of three hundred years ago.

Collections of statutes are easy to come by. An understanding of exactly what was happening as each statute was written, or of what triggered each statute, is more elusive. We know that New York colony was interested in protecting its commerce, and that

counterfeiting was perceived to be a threat to commercialization. The hows, whos and whats behind each counterfeiting law are only sometimes available.

Before examining the various anti-counterfeiting laws of colonial New York, it is necessary to understand something about the roots of colonial American law in general, and colonial New York law in particular. New York's counterfeiting legislation was a response to an immediate and local New World problem; it was also the outgrowth of historic precedent and tradition.

Foundations of Colonial American Law.

Before the end of the seventeenth century British legal influence prevailed in all the American colonies. Inquiry into the roots of American law, says Chafee (1952: 56), must begin with colonial charters. Such charters grant settlers "the customary rights of Englishmen," and empower the chartered company to make necessary laws, so long as "these laws shall conform to the laws of England, as closely as possible."

"Apparently the people wanted to keep something they had long possessed. But for how long?" asks Chafee (1952: 61). He answers his question by presenting three popular theories of colonial American law:

(1) The common law of England was substantially in force in the colonies from the time of their settlement. American law derives from the unwritten and traditional case-law of England,

from English statutes derived from common law, or from colonial modifications of such statutes enacted to address local exigencies.

(2) The colonists had in large measure their own kind of law for a long time after their settlement in America. The original law of the colonies differed from English law. It was crude, primitive, indigenous, and popular. Reception of many of the rules of British common law did not occur until well into the eighteenth century, when lawyers grew more numerous, and received better training.

(3) Colonial law was English local law. Colonial American law, though British in origin, was not based on British common law, on the decisions of the King's courts in London. It was based on local customs and laws administered in the English local courts, which sat in county towns, boroughs, and manors. Such was the law that was transported to the colonies and was the basic factor in seventeenth century law.

Chafee (1952: 79) synthesizes the above theories, suggesting that all of them contain elements of truth:

> ...we may find that all three theories are partly true. It may turn out that Winthrop and Penn and the rest brought over the common law as a body of principles, and not as the mass of case-law (suggested in theory 1); ...that common law was always binding on the settlers, but required to be supplemented from other sources of unwritten law (theory 2) in order to meet their increasingly complex needs, with which local legislation (theory 3) could not possibly keep pace.

British common law always influenced American legal practice

contends Chafee, but the extent to which this is true is a function of time and place. "(Common law) was there from the start in some form...I think of it as an outline map which was gradually filled in as the growth of law libraries and serious legal students brought more and more case-law and detailed doctrines from England. Law was a function of law-books (1952: 79)."

Chafee is comfortable with theory (1), "...if we define the 'the common law of England' more broadly and regard it as a system of principles and rules of action. Such a system could be learned by the colonist from a few treatises like Coke's Institutes and Dalton's Justice of the Peace, which we know they possessed. Such an 'unwritten law' might gradually change with the passage of time (1952: 72)."

The American settlers did not transport most of their law with them from England; nor did they create almost all their law afresh in America, says Chafee. "Since law is the outcome of the thoughts of men in response to the condition in which they live, colonial law was very likely to be a component of the situation of the settlers in the New World and of the ideas they carried across the Atlantic (1952: 69)."

Discussing theory (3), Chafee claims it is more persuasive than theory (2) as it "...allows for the fact that emigrants carry their minds with them...Continuing to do justice by familiar methods was more probable than inventing a mass of novel rules and

processes after arrival in America (1952: 77)." Yet, argues Chafee, it is not enough to show that the colonist handled small disputes in the same way that Englishmen handled small disputes. "The real question is what was done in America about big litigations and serious crimes (such as counterfeiting), which in England went to the King's courts and were governed by the common law...(S)everal reasons (e.g., the fact that the colonists consulted treatises like Coke's Institutes which were permeated with decisions by the King's courts) make me conjecture that the common law was also an important element for a long time before Independence (1952: 78)."

Law in Colonial New York

The laws of colonial New York began with the English takeover of the Dutch owned colony in 1664. Charles II, granted his brother, the Duke of York, the territory embracing New York and Long Island. The Duke received a charter to enact whatever legislation he considered appropriate, provided it was similar to English law. He also was empowered to appoint governors and other officers, and to establish a local government. By its terms, the charter granted absolute and supreme legislative, executive, and judicial control to one authority (Goebel, 1970).

The province of New York was governed exclusively by the "Duke's Laws" (which were modified by various appointed governors and councils with the approval of the Duke) until 1684 when the

growing demand of the colonists for a representative legislative assembly was first accepted. In 1685 the Duke of York became King (James II) and New York became a royal colony. From 1691 until the Revolution, representatives of the people, in a periodically convened General Assembly, participated in the making of laws for the government of the royal colony (Colonial Laws, ii-xix).

These representatives were elected by freeholders in the various counties of New York pursuant to writs issued by the governor. They served in the General Assembly which was one of three parts of the lawmaking body of colonial New York. The governor and lieutenant governor (appointed by the Crown) and the council (appointed by the governor) comprised the other two parts (Colonial Laws, xx).

One of the first acts passed by the General Assembly was the Judiciary Act of 1691. It established the court system of New York, taking as its model the criminal justice system of England, but making modifications to suit the New World situation. "This act," says Greenberg (1976: 34), "represented an attempt to escape the chaos that had prevailed in New York since the surrender of New Amsterdam in 1664 and that had been especially rife during the tumultuous 1680's."

The acts of the colonial legislature, except as modified by the Crown, specific provisions, amendment, or repeal, continued in force until 1828, when it was enacted by chapter 21 of the laws of

that year that any statutes passed by the "late Colony of New York" were no longer in effect (Colonial Laws, vii).

According to Goebel and Naughton (1970), law in colonial New York falls into two stages: the first, 1664-1683; the second, 1684-1776. (It was in 1684 that the concept of a representative, lawmaking body was first introduced and tried in the colony.) These stages are viewed as progressive periods in the reception of English law in New York colony. Stage one is considered an initial experiment with law. Stage two is "...a phase that may be described as one of selective reproduction of English legal institutions at large (1970: xxv)."

Basically, Goebel and Naughton see the first stage of law in New York colony in terms of theories (2) and (3) above (primitive and indigenous, or based on customs and laws administered in English local courts), and the second stage as illustrating theory (1) above (the influence of British common law in the American colonies). The reception of this common law, they claim, was largely by the use of English law books: "English law books were prized in New York because it was from English precedent that provincial law was built (1970: xxviii)."

Whether we look at Goebel and Naughton's stage one or stage two, whether we view the law of colonial New York as primitive and indigenous, based on customs and laws administered in English

local courts, or derived from British common law, we find that class interests influenced the creation of law in colonial New York. But which class interests?

The Aristocracy Notion

From its earliest beginnings New York has been ethnically, politically, and economically diverse. "The central fact in the colony's history, so well observed, even by historians who have slighted it, is the heterogeneity of its population," says Klein (1974: 16), who contends that New York was the most "polygenetic of all the British dependencies in North America."

Judd (1974: 4), focusing on the differences between the prosperous merchants of New York City and the average citizenry, says, "The average denizen who engaged in a craft or provided brawn was not concerned with the issues of import regulations and wharfage fees. His interests were more fundamental and in keeping with the basic concepts behind the establishment of government, that is, the protection of life and property. He wanted the municipality to provide him with adequate police and fire protection, some form of sanitation service, a water supply, and a guarantee of his property rights."

Bonomi (1971: 2-10), viewing the citizens of New York colony as a diverse, factious, and pluralistic people, says, "New York's economy was a mixed one from the start, including agricultural and commercial enterprises of great variety." She takes issue with

historian Carl Becker's view that the aristocratic class, "composed of the great landed and merchant families" controlled the colony and shaped its laws. "Becker believed," says Bonomi, "that the aristocracy was able to 'control' political life, allying itself alternately with the governor or the Assembly in a continuous effort to safeguard upper-class privileges...The briefest look at the character of the New York General Assembly will indicate some of the diffulties that result from too casual an acceptance of the 'aristocracy' notion."

Bonomi goes on to argue that "sufficient uncertainty" exists as to the composition of the General Assembly in colonial New York. It may well have consisted of men of all ranks -- patricians, wealthy merchants and landowners, professionals, businessmen, clerks..., she says, stressing that, "Whatever conclusions one reaches about the 'aristocratic' character of New York's leadership will have to be measured against its remarkable responsiveness to public opinion (1971: 10)." Assemblymen consulted with their constituencies, and wanted to oblige them in terms of lawmaking efforts. Enacted legislation reflected the interests of many groups, not of one singular clique, class, or occupation.

New York, because of its ethnic and economic diversity abounded in special interest groups, whose needs were heard, and responded to, explains Bonomi, discussing the 'two-city' rule of

the colony which served to intensify already existing pluralistic struggles:

> Had not the fur trade and Indian diplomatic activity been centered there, colonial Albany would almost certainly have been nothing more than an obscure backwater town. But fur and Indians, which contributed essential elements to Albany's distinctive style, at the same time assured it of political and economic power that could not be ignored in the councils of government. Thus the Albany area became a center of powerful special interests which enabled it, for at least the first hundred years of its existence, to compete on fairly equal terms with its sister city at the mouth of the Hudson. The 'divided mind' that colonial New York revealed at times can surely be accounted for in part by this initial polarity (1971: 40).

In addition to its "divided mind," New York also had an 'equally' divided economy, says Bonomi. "One of the most observable characteristics of New York Colony was the dual nature of its economy. With commerce and agriculture of nearly equal importance to the colony's prosperity, New York developed both a thriving merchant community and an influential body of wealthy landholders...It has not always been easy to distinguish one group from the other; nor has it ever been entirely clear what inferences ought to be drawn from such distinctions (1971: 56-57)."

Counterfeiting - A Threat to All Interest Groups

A major inference to be drawn from the distinction between the merchant community, the wealthy landholding community, and the many other constituences of New York, is that though they had different priorities, and were preoccupied with achieving different political advantages, they also shared important

concerns. As money achieved greater importance in New York, and barter declined as a means of exchange, prime among these concerns was the need for a sound currency.

In a developing economy, commerce, real-estate, agriculture, business, professions...all rest on stability of currency values. They all need a medium of exchange that has dependable value. A seller does not want to receive worthless money for his goods or services; a buyer can not purchase goods or services with worthless money.

It must be stressed that concern with the real value, or integrity, of one's currency is usually non-existent during the initial stages of currency debasement. Actually, many individuals view counterfeit coins or bills as a panacea for all their immediate money shortages -- until they find that their money has no purchasing power. Such was the case in colonial New York.

Initially counterfeiters were viewed sympathetically; early laws reflected this position. Wealthy landholders and shipping merchants feared a depreciating currency, but the average colonist did not perceive of counterfeiting as a threat to his economic interests, or to the future fiscal health of the colony. Nor did he view counterfeiters as common criminals. Often counterfeiting was considered a harmless activity. Some regarded it as having beneficial value, as increasing specie in circulation, encouraging commerce, assisting small business owners and craftsmen to keep

their enterprises afloat during difficult times (Kammen, 1975).

This perception would change as counterfeiters organized into professional gangs, and became adept at avoiding indictments, while the colony was becoming more commercial and flooded with bogus bills. Legislation reflected this changing perception. Counterfeiting, first regarded as a minor property crime, grew to be regarded as a property and political crime of major consequence.

British Influence on Colonial New York's Counterfeiting Laws.

Though tailored to place and time, the criminal legislation of colonial New York is not without some British influence. "English law books were prized in New York because it was from English precedent that provincial law was built...(I)nnovation during the eighteenth century is affected somewhat by acts of the assembly," says Goebel, 1944: 379). "Some of these provincial statutes merely parroted Acts of Parliament...and some were novel. But it was unusual for anything markedly original to become law, for throughout the colonial period the spirit of adventure languished under the cloud of the royal power of disallowance."

Discussing the use of both common and statutory law in colonial New York, Goebel (1933:272-3) states:

> (T)he dependency of the legal profession upon the output of the English was considerable, yet we do not find that there existed the same passion for the latest case that is one of the ludicrous by-products of our modern system of overreporting. Bracton and Coke were venerated names, and many of the New York lawyers owned and used the old Year Books...In New York, the task

of adjusting the common law to the American wilds was an accomplishment of the legislature, and not of the judiciary; and in the statutes enacted within a period of one century lies the real record of the execution of the crown's behest that colonial law should conform 'as nearly as may be' to the law of England...If the courts lacked flexibility in response to the changes in social needs, social pressure was bound to manifest itself elsewhere. It is perhaps this phase of the law's development in the colony that may account for the extraordinary predominance of the legislature in the government...

Explaining the manner in which early New Yorkers distinguished between felonies and misdemeanors, Goebel and Naughton (1970: 95) conclude that, "...New York colonists took the short road and drew their lines as they had from the first, in terms of capital and non-capital crime...In the main the (British) common law rules regarding what were capital offenses were observed, but there were some occasional deviations...The most important of these colonial aberrations was the offense of counterfeiting coin."

English law was complex regarding coin counterfeiting, and initially New York colonists did not take it seriously, in terms of their own legislative enactments. Say Goebel and Naughton (1970: 95):

Counterfeiting the King's coin or foreign coin if made current in the realm by royal consent was high treason. But counterfeiting foreign coin not made current by proclamation was only punishable as a cheat. Innocently passing counterfeit was also only punishable as a cheat. It was misprision (failure to prevent or notify of treason or felony) of treason if the person uttering (declaring that fraudulent money is good, and attempting to pass it as such) knew who the counterfeiter was. The colonists apparently elected to treat (all) coinage counterfeiters as cheats for they prosecuted persons so charged for misdemeanors.

It is interesting to note here that though British law was explicit on the subject of counterfeiting, coin counterfeiters in England were not treated more harshly than their counterparts in New York. Styles (1980) talks about an 18th century community of "Yellow Traders" who participated in one or another variant of counterfeiting activity without feeling the reach of the law:

> The yellow trade's strongest defence against the terrors of the prevailing criminal law was the participation and support of the local populace...Clipping and coining were redefined in the locality as legitimate business activities, and enthusiastically defended (1980: 209).

In eighteenth century England, and in New York colony, British coin was scarce and debased; the demand for money was high; public sympathy favored counterfeiting activity; and laws and law enforcement met popular resistance. In the case of the yellow traders, coiners were able to explain away any guilt by reference to the fact that their shrunken counterfeits had some bullion value (were made from gold clippings, rather than just base metals) and were imitations of Portuguese moidores (commonly circulated because of the scarcity of British gold coin), rather than the coin of the realm (which would have been unpatriotic). Law violators perceived of themselves as moral and law abiding. One accused coin clipper, for example, claimed he would never consider plating or guilding money because, unlike base-metal counterfeiters, he was an honest dealer, a clipper who would never, "...hurt but King and Country (Styles, 1980: 211)."

In 1704, in an attempt to stem escalating counterfeiting acts in the American colonies, Queen Anne issued a proclamation establishing the value of foreign coin. Now foreign coin would be current. Theoretically New York coiners would be guilty of treason. However, according to Goebel and Naughton (1970: 96-97), who cite a couple of early coining prosecutions alleging fraud (vs. treason) "...this proclamation did not effect a change in the New Yorker's attitude about the nature of the offense of clipping or counterfeiting foreign...Probably the colonial authorities regarded as determinative their own act of 1702 which punished this crime by imprisonment for a year and a day and forfeiture of chattels. This act had not been repealed by the Crown..."

Unlike coining, which did not become a capital offense in New York colony until 1745, the colony's legislation on bills of credit (which quickly became current legal tender) regarded paper counterfeiting as a capital offense from the first bill of credit emission onward. As the colony was commercializing, and politicizing, there was a mounting need to obtain and maintain negotiable 'credit.' Though technically coin and paper currency must both be sound in a developing economy, from the outset bills of credit were viewed as important political (e.g., financing military campaigns and governmental goals) as well as economic instruments. They were redeemable and capable of being used in large transactions. It was critical that they be authentic, and

respected, locally, intercolonially, and internationally, as state issue. Still, many did not understand, or care about, the significant relationship between credit and commerce; and bills of credit, like coins, were counterfeited.

Looking at the Laws

An examination of the anti-counterfeiting laws of colonial New York reveals an ongoing interplay between modernization and legalization. Commercialization (an early stage of modernization) motivated currency regulation and legislation, and currency legislation attempted to assist commercialization efforts. Essentially we see a feedback model: commerce stimulates supportive and protective legislation; supportive and protective legislation fosters commerce. Laws enacted authorizing the issuance of bills of credit in the developing economy contained stipulations aimed at preventing anticipated counterfeiting acts; and counterfeiting legislation enacted to restrain individuals from continuing their participation in counterfeiting frauds hoped to suppress behavior capable of hindering commercialization. Assuming the causal connection between modernization and crime that Louise Shelley (see Chapter III) speaks of, we see law being used as a restrictive intervening mechanism, a crime constraint, and a facilitating factor in the modernization process.

An examination of the specific laws enacted to deter counterfeiting activity in colonial New York provides an insight

into the colony's increasing social concern with commerce and credit, into the increasing use and abuse of currency in the colony, and into the growing sophistication of counterfeiters. However, information regarding any case law that might have triggered specific statutes, or the typology of prosecuted offenders, or the degree to which the laws were enforced is more likely to be learned from an examination of court records and newspaper accounts (see following chapter).

Rather than allowing statutes to remain dormant through judicial non-application or legislative non-alteration, it was customary in colonial New York to enact non-capital legislation for limited time periods. The prevailing attitude among lawmakers appears to have been 'Let's experiment; let's see if this statute works;' and laws were thus constructed. Counterfeiting, and other statutes, frequently ended with words such as, "Provided, That this Act shall be of force for the space of one year, and no longer." If lawmakers foresaw a need to revive an expired act, which was often the case, it was revived as a new act; again, for a predetermined number of years.

Many of the anti-counterfeiting acts were clearly drafted to suppress particular kinds of counterfeiting activity, to address new innovations in an old crime. The heading of an enactment stated its specific focus (e.g., "An Act against Forging, Counterfeiting and Clipping of Foreign Coyn (sic) which is Current

Money in the Collony of New-York"). Often though, a prohibition against counterfeiting was written into the body of another law, also related to currency. For example, within "An Act for the Currency of Bills of Credit for Four Thousand Pounds" appears the warning, "Any such person or persons as shall be convicted of Counterfeiting any of the said Bills of Credit, shall incur the Pains and Penalties of Fellony (sic), without the benefit of Clergy, and suffer accordingly (Colonial Laws, I: 689-691)."

The text of the series of enactments covering counterfeiting frauds contains terms whose explanations are integral to an understanding of the anti-counterfeiting legislation of eighteenth century New York:

Counterfeiting - The fraudulent reproduction or alteration of money or financial instruments (e.g., bills of credit) produced by a state or its official designees.

Forgery - The false writing, or alteration of writing, of official documents (e.g., bills of credit, bonds, contracts) with the intent to defraud). This current research addresses only the forgery of official circulating currency.

Coining - The counterfeiting of coins, or 'hard' money (as opposed to bills of credit), used as currency in New York.

Bills of Credit - Paper notes, issued and backed by a state government, or its designees; used to cover official obligations,

commercial obligations, circulate as money, and serve as legal tender payment for personal debts and taxes within the issuing colony. Colonial legislatures authorized the emission of these Bills (denominated in English pounds, shillings, and pence) only to a specific sum and usually set the number of each denomination to be issued.

Passing - Delivering counterfeit currency, which is accepted by another party, as payment or exchange for something.

Uttering - Having a certain sum of fraudulent money on one's person, declaring that this fraudulent money is good, and attempting to pass it as such.

Clipping - Cutting the edges off legal coins to create new, unauthorized coinage, or to sell as bullion.

Die - An engraved device used for impressing a design on soft metal and creating coinage.

Plate - An engraved device used for impressing a design on paper and creating paper currency or documents.

Felony - In colonial America, and early English law, a crime punishable by death, mutilation, and/or forfeiture of property.

Benefit of Clergy - A one-time exemption from criminal liability and capital punishment by the secular courts that was originally accorded to clergymen, and later extended to a larger segment of the population (e.g., those able to read a biblical verse, small-time first offenders), thereby mitigating the extreme

harshness of the criminal laws.[1]

Commerce - The large and small scale, local and overseas, road and maritime interchange of goods, commodities, and/or services; trade, business.

Even before New York became a British colony legal attention was directed at suppressing counterfeiting. Under Dutch rule, New Netherland (later renamed New York) currency, wampum, was being imitated by both Whites and Indians. On May 30, 1650 an ordinance, requesting better regulation of the currency, was passed by the director and council of New Netherland. It began with a statement regarding the "...decline and daily depreciation of the loose Wampum, among which are circulating many without holes and half finished, also some of Stone, Bone, Glass, Muscle shells, yea even of Wood and Broken Beads (O'Callaghan, 1868: 115)."

By 1680 the colonists (in what was now New York) had begun importing, imitating, and passing silver coins that were imitations of those issued by the Massachusetts Bay colony. Desiring a more flexible and stable currency than that offered by wampum, Massachusetts had minted its own coinage from 1652 until 1682 when Britain formally forbade colonial coinage. The increasing counterfeiting and passing of this Massachusetts money (known as Pine Tree coinage), in New York as well as

[1]Virtually all felonies were capital. Benefit of Clergy enabled a felon convicted of certain offenses to avoid capital punishment in one instance only. This effectively created a class of 'single,' or non-capital, felonies.

Massachusetts, led to the first of a series of enactments (see Table 5 for legislation outline) aimed at suppressing variants of counterfeiting activity (DeLeonardis, 1988).

On December 29, 1683 the governor and council of New York issued a warrant for the apprehension and punishment of passers of false coin, claiming that counterfeit Massachusetts, Spanish, and other coin currencies were circulating around New York City. According to the warrant, several people had provided reliable information regarding the allegation. It was ordered that anyone found passing such counterfeits be brought before a nearby law official (mayor, alderman, magistrate, justice of the peace) to explain where he received the illegal coin. If the account was unacceptable, the passer would be proceeded against in keeping with the current law (which at that time was usually a fine or corporal punishment, but ultimately would become harsher as coining moved from misdemeanor to felony status) (N.Y. Col. Ms., 34: 14).

This 1683 warrant may be an example of case law triggering a legislative enactment, for in 1680 two men (see Table 6, Chapter VI) were apprehended by the sheriff of New York City and punished for the coining and passing of fraudulent Masachusetts currency in New York.

Apparently coining persisted, and lawmakers came to consider the 1683 warrant ineffective, for on November 27, 1702 a law was

Table 5: COUNTERFEITING LAWS OF N.Y. COLONY, 1683-1773

Date	Law	What triggered law?	Techno-thwarts	Perimeter thwarts	Penal thwarts
1) 12/29/1683	warrant for arrest and punishment of false coin passers.	importation of counterfeited Mass. shilling coins.		passers operating in NY to be taken to local official.	misdemeanor -- fine or corporal punishment.
2) 11/27/1702	1-year act criminalizing counterfg of coin currency.	fear re increase in debasement and utterg of gold & silver coins.		forging, counterfg, or clipping foreign coin current in NY.	prison for year and day, forfeiture of all goods &chattel.
3) 4/17/1705	proclamation forbdg importation of clipped coins.	importation of devalued coins to facilitate rise in commerce.		clipped bitts and double bitts from other colonies.	
4) 10/6/1708	act regulating value of circulating coin currency.	coin scarcity, overvaluing leading to currency corruption.		coin rates and values limited to specified conditions.	New Yorkers to refuse to accept as payment overrated coin currency.
5) 10/6/1708	revival of 1702 1-year act for 10 yrs.	case law and illegal coining activity		same as #2 above.	same as #2 above.
6) 6/8/1709	BOC issuance with counterfeiting deterrence clause.	need for funds for expedition against Canada.	intricate currency design provisions to deter imitations.		
7) 11/1/1709	BOC issuance with cfg deterrence clause & warning.	487 more men needed to go on expedition against Canada.	same as #6 above.		BOC cftg now felony without benefit of clergy -capital offense.
8) 11/12/1709	same as #7 above.	debt for Canadian expedition & other uses.	same as #6 above.		same as #7 above.
9) 7/26/1711	BOC issuance with crtg. deterrence clause & warning.	need to pay militia to Canada plus other debts of the colony.	same as #6 above.		same as #7 above.
10) 9/14/1714	same as #9 above.	same as #9 above plus increase in use of paper currency as media for commerce.	same as #6 above.		same as #7 above.
11) 7/5/1714	" "		" "		" "
12) 12/23/1717	" "		" "		" "

*BOC - Bill of Credit

Table 5 (contd.): COUNTERFEITING LAWS OF N.Y. COLONY, 1683-1773

Date	Law	What triggered law?	Techno-thwarts	Perimeter thwarts	Penal thwarts
13) 11/19/1720	BOC issuance with cftg deterrence provisions & warning.	debts of colony and growth in use & abuse of paper currency.	same as #6 above.	now altering & pass- specified along with counterfeiting.	word 'death' replaces 'felony,' used in #7 above.
14) 7/24/1724	act to replace torn & defaced bills has ctfg deterrence provisions & warning.	illegibility of bills, fear of altering, bill fragility presents usage problem.	same as #6 above.	same as #13 above.	same as #13 above.
15) 11/11/1726	BOC issuance authorizes 'stopping' of cftd or altered BOC.	same as #13 above.	same as #6 above. bills trought to treasurer for exchg. or tax pmt could be detained if suspect.	fake BOC to be destroyed in court & passers prosecuted.	punishment as by 1724 act.
16) 10/17/1730	same as #14 above.	same as #14 above.	same as # 6 above.	same as #14 above.	punishment as already exists by former acts.
17) 11/28/1734	same as #13 above.	same as #13 above. Warnings re circulating counterfeits now in newspapers.	same as #6 above.	same as #13 above.	same as #13 above.
18) 2/5/1735	Proclamation offering reward for capture of counterftrs of certain bills.	uttering of several fakes of BOC issue.		10 shilling bills of 1730 replacement emission specified for reward.	reward vs. punishment -- 50£.
19) 12/16/1737	same as #13 above.	mobility - counterftrs now operating across colony lines.	same as #6 above plus new design provisions.	new clause inserted empowering grand jury to indict those operating outside of NY with NY bills.	the (by now) standard death penalty warning against ctfg, altering & passing.
20) 11/29/1745	act making it a felony to counterft or pass foreign coin currency in NY.	increase in coin counterftg, case law.		Spanish, French, or Portugese coins used as currency in NY.	death, without benefit of clergy.

Table 5 (contd.): COUNTERFEITING LAWS OF N.Y. COLONY, 1683 - 1773

Date	Law	What triggered law?	Techno-thwarts	Perimeter thwarts	Penal thwarts
21) 12/12/1753	act to prevent the importing or passing of British fake coppers.	demand for small change led NY to become glutted with imported counterfeit coppers, subsequent devaluation of good coppers.	coin meltdown provisions.	importing, possessing or passing coppers in NY, time limits for reporting or surrendering fakes.	stiff fines, seizure, & victim restitution.
22) 7/9/1756	act to "more effectually" suppress NY BOC counterfeiting.	confession in famous case re role of accomplices.		concealing or helping conceal plates, bills, materials, or implements in NY.	death, without benefit of clergy.
23) 7/3/1759	BOC issuance with cftg deterrence provisions & warning.	need for financing of French & Indian War, growth of cftg gangs operating across colony lines.	same as #6 above. 'Tis Death to counterfeit printed on bills.	same as #19 above.	same as #19 above.
24) 7/3/1766	act making it a felony without benefit of clergy to cft BOC of any colony which are current in NY.	case law re large parcels of NJ BOC.		cftg, altering, or passing out-of-colony bills within NY.	same as #19 above.
25) 2/16/1771	same as #23 above.	growth in colonial debts & in use and abuse of currency.	same as #6 above.		same as #19 above.
26) 3/8/1773	act to "remedy the Evil" NY exposed to from great amt of cft money introduced into it.	court cases, cftg gangs, newspaper reports, need to protect the commerce of the colony.	creation of hard to imitate plates & designs for paste-ons to be affixed to recently issued BOC, immediate plate meltdowns after use.	use of printers and bill signers as expert witnesses.	rewards for apprehension of paste-on ctfrs or passers of bills without required paste-ons.

passed in New York which established counterfeiting as a serious criminal act. Entitled "An Act against Forging, Counterfeiting and Clipping of Foreign Coyn (sic), which is Current Money in the Collony (sic) of New-York," it mentioned that up to that time no "Condigne Punishment" existed for such offenses. Now coining was perceived to be an escalating danger. The act stated that "...divers (sic) evil disposed Persons" were being "...encouraged and imboldened Dayly (sic) to ...lessen and debase such kind of Gold and Silver, and utter the same in this Collony (sic), to the great detriment of her Majestys (sic) Subjects." (Later enactments would be more specific about this "great detriment," referring to counterfeiting as a threat to the credit and commerce of the colony.)

Like the 1683 warrant, but in greater detail, this 1702 enactment specified legal boundaries (perimeter thwarts), in this instance particular variants of counterfeiting outlawed (forging, counterfeiting, and clipping of foreign coin used as "current money" in New York), and who would be held accountable (those who "falsely Forge, Counterfeit, Clip, File or otherwise lessen or debase any such kind of Gold or Silver, as is the current Money of this Collony (sic)" and "their promoters, aiders and abettors"). Also mentioned, as would become standard, was that "Representatives conven'd in the General Assembly," as well as the governor and council, enacted this legislation.

Unlike the 1683 warrant, this 1702 enactment attempted to thwart coining fraud by setting the penalty for it as imprisonment "...for the space of one whole Year and a Day" and the forfeiture of all "Goods and Chattels." This more severe 'penal thwart,' it was hoped, would make the risk factor high enough to deter offenders who were being tried for coining offenses (again, case law triggering statute law) and potential offenders. The customary 'Let's see if this statute works' attitude was incorporated into the body of the legislation with the words, "...That this Act shall be of force for the space of one Year, and no longer (Colonial Laws, I: 521-522)."

Perhaps no adequate ("Condigne") punishment existed prior to the 1702 law because coining frauds were not occurring with great enough frequency or producing large amounts of fake coinage; offenders were not being "encouraged and imboldened Dayly." We have no way of knowing the actual amount of bogus money in circulation. However, we do know that towards the close of the seventeenth century coinage value was becoming more symbolic than real and that this event created an "encouraging and imboldening" opportunity for would-be coin counterfeiters. They were freed from worrying about the risk of using base metals in imitating genuine pieces.

Several laws followed the 1702 enactment, all of them in one way or another addressing the issue of coin or paper

counterfeiting, and providing a good example of 'Thwart Law' (see Chapter 3). Summarizing the following discussion of specific acts, Table 5 outlines New York's anti-counterfeiting legislation between 1664 (when New York became a British colony) and 1776 (the Revolutionary War) in terms of three categories:

(1) LAW - Variant(s) of counterfeiting covered (e.g., coin clipping, bill passing, uttering, plate concealing, altering).

(2) WHAT TRIGGERED LAW - Events that might have prompted a specific counterfeiting statute or provisional clause within another statute (e.g., court cases regarding counterfeiting offenses, growth of commerce creating the need for a sound currency).

(3) THWARTS - Insertions written into the text of a law to frustrate or deter potential counterfeiting attempts --

a. Techno-thwarts - technological obstacles, such as intricate bill of credit design provisions, making currency more difficult to imitate.

b. Perimeter thwarts - who, what, where, how much...boundary details or stipulations which must be legally observed, such as who, specifically can be held accountable, or where a particular activity can not be perpetrated.

c. Penal thwarts expressed, fixed punishments, such as fines, whippings, or death, designed to minimize risk taking.

Apparently, New York lawmakers were concerned not just with

coin counterfeiting within the colony, but also with the importation of debased coinage from neighboring colonies, for on April 17, 1705 the governor and council of New York issued a proclamation forbidding the importation of clipped "bitts and double bitts (Manuscript Minutes Council, 1705, 9: 517)."

Coinage scarcity also seems to have led to the exploitation, through coin overvaluation, of merchants and others dependent on hard money. On October 6, 1708 an act was passed "...for the Regulating and preventing the Corruption of the Currant (sic) Coyn (sic)." The act sought to thwart coin clippers by restricting coinage rates and values to specified conditions. It read, "Be it enacted by the Governour, Council and Assembly that...none of the Severall (sic) Coyns (sic) herein after mentioned shall be paid, Received or taken but at the Rates and Value herein Limitted (sic) and Exprest (sic) and no otherwise ...All Spanish half Ryals fair, unclipt and no manner of way defac'd at Nine pence. All Spanish Double Ryalls not Clipt at...from hence forth no person or persons in this Colony shall be bound or Compell'd to Receive in payment any of the Species of money before mentioned at any higher or greater price or Rate than is before Sett (sic) forth...(Colonial Laws I: 620-621)."

Also passed on October 6, 1708 was a statute reviving the expired 1702 act against the counterfeiting and clipping of foreign coin current in New York colony. It's likely that the

lawmakers, cognizant of a series of coining cases that had been coming to trial, realized they were looking at a problem that wasn't likely to end quickly, as this 1708 enactment, unlike the one-year enactment of 1702, ended with the provision that it was to "...remaine (sic) in Force for and during the Term of Ten Yeares (sic) from and after the Publication of this Act and no Longer (Colonial Laws, I: 621). Incrementally, case law was influencing statute law. (Though there may or may not be a connection, it is interesting to note here that on the same day the above two currency enactments were passed an enactment was also passed regarding the rebuilding of a jail.)

Within months, legal focus turned from coinage to paper currency. On June 8, 1709 "An ACT for the Currency of Bills of Credit for five thousand pounds" was passed. This was the first law in colonial New York for the emission of paper money. (The justification for this statute was that funds were needed to finance a military expedition against Canada.) Perhaps remembering that one of the reasons the Massachusetts Pine Tree coinage was counterfeited was that its crude design made it an easy target for counterfeiters, or that Massachusetts paper currency had also been counterfeited (Manuscript Minutes Council, 1705, 9: 520), New York's lawmakers wrote counterfeiting deterrence clauses within this 1709 enactment in anticipation of bogus paper being put out. Would-be counterfeiters would be, if not stopped, at least

thwarted from the outset.

Stating that the bills of credit would be "...equal to the Current Coin passing in this Colony," this 1709 enactment went on to order various designs and other precautions in order to prevent counterfeiting:

> (T)he said Bills of Credit shall be printed and numbered, expressing every of them, the sum of money they shall be Current for, and to prevent the Counterfeiting any of the said Bills they shall be Dated and Indented on the top thereof with the Arms of the City of New York Stamp'd or printed ...and the Indent shall pair with and Suit a Counterpart thereof, bound in A book for that purpose...each Bill amounting to in all five thousand pounds and Delivered by the Signee...to the Treasurer of the Colony...the said Signees shall not sign a greater number of the said Bills of Credit than what Shall amount to, or pass, or be Current, for more than five thousand pounds Current money of this Colony...(Colonial Laws I: 666-667).

The colonists of New York, and other American colonies, were experimenting with a form of legal tender that was unused in other economies. They could only hope their experiments would work and their colonies would survive financially. Discussing the fact that the American economy was the first to become based upon the acceptance of governmental paper money for economic transactions, Newman (1976: 2) explains that despair and pragmatism prompted paper issuances:

> Necessity required many innovative approaches, in order to find types of acceptable workable media for commerce. Hedged in by British economic regulations prohibiting the holding of hard money in the colonies, finding that barter was unsuited to the needs of a rapidly growing population, the colonies simply developed the use of governmental paper money as a matter of expedience and convenience.

However innovative the use of paper money may have been, or

clever the precautions taken to prevent fraudulent reproductions, the opportunity to engage in paper counterfeiting was irresistible. Counterfeiters could use materials intrinsically equal to what government printers were using and make profits thousands of times their investments (Glaser, 1968). Paper counterfeiting was much more lucrative than coining, as much of the fake coinage had at least some worth. Additionally, paper counterfeiting allowed for the imitating of larger amounts of money than did coining (one bill could be worth as much as several coins).

Though paper currency was now in use, coinage was still highly valued in New York colony. Not only was it considered necessary for bill of credit redemption purposes, but, like today, it was used for making change, and for small transactions. Concerned that unfavorable balances of payments might deplete what little supply of coinage existed, lawmakers, on September 24, 1709 passed an act (to be in force for two years) "...to prevent the Exportation of the Gold and Silver Coin out of this Colony." Perimeter and penal thwarts were written into the statute. Ship captains were required to take oaths, before authorities, that they had not, and were not, taking gold or silver coin, plate, or bullion out of the colony, and to provide lists of names of those exporting goods (who would then be examined by authorities, if at all suspect). If the ship captains did not comply, they were to be

"...Comitted (sic) to the Common Goale (sic) there to remain, untill (sic) he or they respectively, shall appear deliver in such List & make such Oath as aforesaid." Additionally, those caught exporting gold or silver would be "...under the Penalty of forfeiting Double the Value of all Such Gold or Silver or Bullion shipt on Board any Ship or other Vessel Exported or Carry'd out of this Colony by Land or by Water to be recoverer'd in any of Her Ma'ties Courts within this Colony... (Colonial Laws, I: 678-679)."

On November 1, 1709 another act was passed authorizing the issuance of bills of credit for four thousand pounds. This emission was to be used to pay "...the Four hundred eighty seven Men of the Militia of this Colony, appointed to serve in the Expedition to reduce Canada." In an attempt to prevent the counterfeiting of this new issuance, the law stipulated that "...to prevent Counterfeiting any of the said Bills, they shall be dated and circumstanced in all respects as the bills of Credit are, that are mentioned, expressed and made current in an Act, entituled (sic), An Act for the currency of Bills of credit for 5000 £,..."

In addition to the insertion into this enactment of counterfeiting techno-thwarts similar to those of the first currency emission statute, within the text of this law appears the penal thwart "...And such person or persons as shall be convicted

of Counterfeiting any of the said Bills of Credit, shall incur the Pains and Penalties of Fellony (sic), without the benefit of Clergy, and suffer accordingly (Colonial Laws, I: 690-691)." This was the first mention made in the laws of colonial New York that counterfeiting would be treated as a capital crime.

As the first recorded court case of paper counterfeiting in colonial New York did not take place until 1713, we may surmise that this penal thwart, like the techno-thwarts regarding currency design, was anticipatory, based on knowledge of paper counterfeiting occurring in neighboring colonies. Perhaps the lawmakers believed that the more thwarts they wrote into their currency laws, the less the likelihood of their having to deal with bogus bills in circulation. In any event, the concept of capital punishment for counterfeiting was not a New York innovation. It was completely within the tradition of British legal thinking which regarded counterfeiting of state sponsored, or recognized, currency to be an act of high treason (a capital offense), as it endangered both king and country (Styles, 1980).

The texts of currency emission acts passed on November 12, 1709, July 26, 1711, September 4, 1714, July 5, 1715, and December 23, 1717 restated that currency design stipulations of the November 1, 1709 statute were likewise applicable, as was the warning that counterfeiting would be treated as a felony without benefit of clergy. The July 26, 1711 enactment was the last

currency statute for a few decades to explain a bill of credit issuance in terms of financing a military expedition (Queen Anne's War, which began in 1702, ended in 1713). Succeeding emission enactments indicated that there existed a need for more bills to be put into circulation in order to discharge governmental debts, and as a media for commerce.

On November 19, 1720 and July 24, 1724, in laws also involving the issuance of bills of credit, specific references to "altering," "passing," (permimeter thwarts) and "death" (penal thwart) are now added to the in-text clauses regarding currency design precautions and counterfeiting :

> ...if any Person or Persons Shall presume to Counterfeit any of the Bills of Credit made Current by this or any other Act of the Generall (sic) Assembly of this Province or Shall alter any of the Said Bills made Current as aforesaid as that they Shall appear to be of greater Value then (sic) by any of the said Acts...or Shall knowingly pass any of the Bills aforesaid so Counterfeited or altered every Person guilty of Counterfeiting or altering the Said Bill as aforesaid Shall be guilty of felony and Convicted of Such Counterfeiting or altering Shall Suffer Death accordingly and not have the benifit (sic) of Clergy and every Person knowingly PASSING any Such Counterfeit or altered Bill and Convicted thereof Shall also Siffer (sic) the pains of Death without benifit of Clergy (Colonial Laws, II: 25, 205).

The July 24, 1724 enactment, which authorized a currency emission for the purpose of "...Exchanging therewith Such Bills of Credit of this province as are torn and Defaced," also contained a clause justifying the issuance of new bills because the "Torne (sic) ragged Shattered and pasted" older bills "...may more over Tempt Evil Disposed Persons to alter the Same to a greater Vallue

(sic) than they were Originally Struck & Issued for,...(Colonial Laws, II: 200)."

Based on the words of these new warnings and authorizations, it appears as though legislators, aware of growing variants of counterfeiting activity, felt a need to be more specific about what constituted 'counterfeiting.' One could now be convicted for fraudulently reproducing a section of an authentic bill. "Altering" (e.g., changing a 3 into an 8) became sufficient ground for guilt. So too did "Passing," whether or not the passer was the actual creator of the bill (as long as he was "knowingly" participating in the fraud). Given this legislative inclination towards increased specificity, it seems fair to assume that the word "Death" was substituted for the earlier "pains and Penalties of Fellony (sic)," not only because it left no margin for a more lenient punishment, but also as it provided greater clarity.

Case law, and evidence of increased counterfeiting, may well have prompted the increasing linguistic preciseness in currency emission statutes. In addition to several paper counterfeiting cases coming to trial, according to the Manuscript Minutes of the New York City Quarter Sessions Court for 1720 (see pps. 171-172), 1723 (Ms. Mins. NYCQS, Book 2: 1694-1731, p.421), and 1724 (Ms. Mins. NYCQS, Book 2: 1694-1731, pps. 437, 442), many false bills of credit were being brought into court and destroyed, without the counterfeiters of these bills being traced.

Two men charged with altering and passing were tried in 1725, and in the same year more false bills were brought into Quarter Sessions court (Ms. Mins. NYCQS, Book 2: 1694-1731, p 453). Legislators, attempting to suppress continued counterfeiting violations seemed to deem it time to create a special statute addressed solely to counterfeiting fraud (as opposed to including counterfeiting frauds within a bill of credit emission enactment).

On November 11, 1726 an act was passed authorizing authorities to stop bills they "...have Good reason to Suspect Are Counterfeited or Altered to Appear of A higher Value than they were originally Struck for..." This statute was aimed at deterring individuals from attempting to exchange bogus bills for hard currency or use them to pay taxes. It specified that the treasurer, or justice of the peace, receiving the fakes were to "...detain Such Suspected Bills and to endorse thereon the Name of the Person tendring the same and the time when..." and to bring them to the next session court for destruction "...or to Proceed thereon as in their Discretion shall Seem meet..."

A clause within this enactment stated that anyone convicted of counterfeiting would "...Incur the Same forfeitures Pains and Penalties..." contained in the July 24, 1724 statute. The last sentence of this 1726 law repeated this provision, stating that "...nothing herein Contained Shall alter or lessen the Punishments inflicted by any former Act or Acts of the General Assembly of

this Colony on persons Counterfeiting the Bills of Credit thereby made Current in the said Colony (Colonial Laws, II: 344-345)."

On October 17, 1730 and November 28,1734 two more statutes were passed for striking bills of credit. Both enactments restated the same warnings about counterfeiting introduced in the November 19, 1720 currency emission act. The death penalty, without benefit of clergy, was to be applied to anyone who counterfeited, altered, or knowingly passed, altered, or counterfeited bills of these latter emissions (Colonial Laws, II: 655, 888). As we'll see in the next chapter, what the law said, and what actually occurred, were often quite different.

The 1730 act, authorizing £3,000 to be put in the treasury to be exchanged for shattered, torn, or defaced bills, was the last currency statute to mention indenture (which had ended anyway) within the text of the law. Though a theoretically clever techno-thwart against counterfeiting, indenture had proven ineffective. According to Newman (1967:21), "This procedure became impractical because of the extra work involved in numbering and cutting, and because the bills became tattered on the indented end as well as elsewhere."

The term "indented bill" continued to be used in currency legislation after the actual indenture process was discontinued, says Newman, citing the fact that the New York bills of credit issued in 1714 were not indented, though the law required that

they be so. Stubs, which were previously cut off and retained by the treasurer in the course of indenture, remained one with the bill. Bills of some later emissions were smaller in size than the original strikings in order to minimize folding, splitting, and tearing of bills which were too large for a normal purse or pocket, claims Newman (1967), but they were no longer indented.

Despite the severity of the anti-counterfeiting statutes, counterfeiting frauds continued, with just a few more offenders coming to trial, but many, according to local eighteenth century newspapers, escaping apprehension while introducing large numbers of bogus bills into circulation. On February 5, 1735 a proclamation, issued by the governor and council, offered a 50£ reward for the discovery of the counterfeiter(s) of ten shilling bills of the 1730 emission, and promised a pardon to accomplices who supplied evidence. Printed in the New York Gazette, it stated:

> ...that several of such False bills have of late been uttered in Payment, which, if not timely prevented, may tend to the great hurt and damage of many of his Majesty's Liege Subjects within this Colony...I (Governor William Cosby) have therefore thought fit with the Advice of his Majesty's Council to issue this Proclamation, hereby promising a Reward of Fifty Pounds to any Person or Persons who shall Discover the Author or Authors of the aforesaid False or Counterfeit Bills to be paid ...upon the Conviction of such Author or Authors. And I do likewise hereby Promise a Pardon to any of the Accomplices that were privy, aiding or assisting to, interested, employed or concerned therein, who shall make such Discovery as aforesaid (N.Y. Gazette, 1735, Feb. 11, p. 3).

The same issue of the New York Gazette which carried this proclamation speculated (on the same page) on who it believed was

the author of the false ten shilling bills of credit, and how such bills might be identified. It was explained that someone who had received these bogus bills:

> ...return'd them to one Joseph Johnson ...a Journey-Man Printer, who being told they were Counterfeit Bills, did not deny the passing of them, but said, I will change them, and gave good Money for them...about an hour after he began to pack up his goods, and in the dead of the Night removed them; and...went off in a Boat...This gave a suspicion that said Johnson was the Maker as well as Passer of these false Bills...which are pretty difficult to be distinguished from the True Bills, the Signers Names being nearly Imitated, but upon a nice observation there is some difference, more Particularly in the Vanes of the Wind-mill, the Flour Cask, and the Letter N in the Arms of the City of New-York.

On December 16, 1737 another law was passed authorizing an issuance of bills of credit. In addition to previously devised, and new, techno-thwarts regarding designs, numbering, and signatures, a line through the center of the border of the two highest denominations was to be drawn to discourage alteration.

This enactment contained the, by now, standard death penalty warning against counterfeiting, altering, and passing, but with a new provision added. Included was a (perimeter thwart) clause empowering the New York grand jury to indict offenders operating outside of the colony of New York with New York bills: "...tho Such Counterfeiting altering or knowingly passing counterfeit or altered Bills Shall be done out of this Colony, yet any Grand Jury within the Colony is hereby Impowered ...(Colonial Laws, II: 1028-1029)."

The danger of the mobility of counterfeiters was becoming clear to lawmakers. As colonial populations were expanding, and highways were being constructed, intercolonial commerce was increasing. Counterfeiters, like legitimate businessmen, were better able to try their trade in new areas; and, from their perspective, it was wise that they do so. They were less likely to be identified, and the bills they passed, being of New York, rather than of the colony in which they were operating, were less likely to be detected as fraudulent.

Thus, no longer were fraudulent New York bills necessarily being made or passed within the colony. As intercolonial mobility increased, counterfeits could easily be made and/or passed in New Jersey, Connecticut, Massachusetts, or any nearby colony where merchants eager for business were willing to accept the bills of neighboring provinces.

Lawmakers, aware of the advantage increased mobility gave counterfeiters, hoped to thwart counterfeiters, and passers, through legislation criminalizing their behavior regardless of the geographical location from which they operated. It is quite likely that such legislation ultimately prepared the stage for federalism, particularly in terms of the creation of a national currency; but, for now, statutes minimizing the lure of colony crossing would have to suffice.

On July 3, 1739 the governor and council of New York issued a

proclamation, declaring:

> ...that Several large parcells (sic) of the forty shillings Bills of Credit of this Colony Struck and Issued in the year 1737 were also Counterfeited or forged by Bills printed in Ireland and lately Imported ...That the false or forged bills of five pounds were altered from a five shillings bill into that vallue (sic) by raising out the word (shillings) and in the stead thereof pasting on the word (pounds) in a print of different Types...(Ms. Mins. Council, 1739, 19: 21-24).

This proclamation went on to offer a reward to anyone discovering the author(s) of the altered bills. The reward would be paid upon conviction of the offenders. Also offered was a "...pardon to any such accomplice or accomplices who shall make discovery of the author or author of the sd. forged altered or counterfeited bills..."

The July 9, 1739 issue of the New York Gazette printed the above proclamation along with an article mentioning a mariner, Garrit van Vooris, who had been jailed, and escaped imprisonment, for uttering the counterfeit forty shillings bills of the 1737 emission. The article stated that Vooris had "...caused a great Number of the same (the 40 shilling bills) to be Printed in Ireland, and imported into this City..." Apparently, not only were counterfeiters creating New York bills out of colony, but also out of country.

According to the Manuscript Minutes of the New York City Court of Quarter Sessions, Book 3: 1732-1762, pps. 102-107, a great variety of counterfeit bills were being brought into the court and destroyed. Concerned about the large number of

counterfeits in circulation, and aware of out-of-colony operations and the Vooris case, lawmakers, in the currency replacement enactment of October 25, 1739 repeated the now customary death penalty warnings against counterfeiting, altering, and passing, and included within the new law the 1737 enactment warnings that out-of-colony counterfeiting was subject to the same penalties as in-colony violations. Also ordered for the latest bill of credit striking was that a line be printed through the two highest (5£ and 10£) denominations (e.g. ~~FIVE POUNDS~~) to discourage alteration from a lower to a higher denomination (i.e., from FIVE SHILLINGS TO FIVE POUNDS).

The relationship between counterfeiting and mobility seems not only to have been a problem for lawmakers, but also to have been a theme in the backgrounds of many colonial New York counterfeiters. Focusing on those who persisted in the illegal craft, rather than on the marginal dabbler, Greenberg (1976:105-106) argues that they "...shared a common rootlessness. None of them lived in one place for very long." He sees as an "underlying theme" in the lives of these capital offenders, an "....extraordinary physical mobility. Not only did they travel freely and often between colonies - indeed, none of them was really a permanent resident of New York or any other colony - - but also they were able to travel outside the country - to England and back - with relative ease (a situation which made it

easy for them to have plates for counterfeiting made by experts abroad)."

While paper counterfeiting regularly attracted the attention of New York legislators heedful of preserving the integrity and value of their governmental bills of credit, coin counterfeiting continued. However, no legislation aimed at deterring it appeared between 1718 and 1745. The 1708 law, which had established, for a ten year period, the penalty of imprisonment "for the space of one whole Year and a Day" and the forfeiture of all Goods and Chattels," expired in 1718, and was not revived.

Perhaps because the increase in paper counterfeiting was making coinage more valuable, and because several coin counterfeiters were indicted in 1745 for counterfeiting large amounts of silver and gold coin, the general assembly of New York passed, on November 29, 1745, "An act To make it Felony without Benefit of Clergy, to Counterfeit any Spanish, French or Portugeese (sic) Gold or Silver within this Colony." The act began with the words "Whereas evil disposed Persons have Lately attempted to Counterfeit the Spanish French & Portugeese (sic) Gold Coins & the Spanish Pieces of Eight & other Spanish Silver Coins Imported into this Colony..." and ended with the warning that any person found guilty of counterfeiting such foreign coin (which was the basic metallic currency circulating in colonial New York), or of knowingly passing it, would be subject to "...Suffer

the Pains & Penalty of Death with out the Benefit of Clergy, as in Cases of Felony, any Law Usage or Custom to the Contrary Notwithstanding (Colonial Laws, III: 511)."

The continuous demand for small denomination coinage, coupled with British reluctance to supply it, led not only to gold and silver counterfeiting, but to the overvaluation of existing coppers and to the illegal exportation of them from England. According to Scott (1953: 102), it became "...profitable to export counterfeits into the colony, and this is exactly what happened."

New York became glutted with counterfeit coppers. Consequently, disgruntled merchants lowered the value at which good coppers would be accepted (much to the fury of the colony's poorer inhabitants who were losing the little spending power they had). This situation resulted in legislation designed to pacify two special interest groups, the merchants and the masses. On December 12, 1753 an act was passed "...to prevent the importing or passing Counterfeits of British half Pence and Farthings." As copper was not considered legal tender (state issue) for major transactions, the importing or passing of it did not become a capital offense, but rather punishable by stiff fines, seizure, and restitution (penal thwarts). Time limits (perimeter thwarts) were given for the reporting and surrendering of false coppers received in the colony, "...Provided such Counterfeits of British Half pence or Farthings be delivered to some Magistrate and such

demand (for restitution) made...within One Week...(lest victims) not have any Remedy by this Act." Also, search warrants were authorized "...if any Magistrate shall receive Information upon Oath, that any Counterfeits...were seen or discovered..." In order to keep the counterfeit coppers from reentering circulation it was "...Respectively required once every Year to give order for the Melting down (techno-thwart) all Such Counterfeits of British half pence or Farthings as shall or may from time to time be delivered (to authorities)...(Colonial Laws, III: 948-951)."

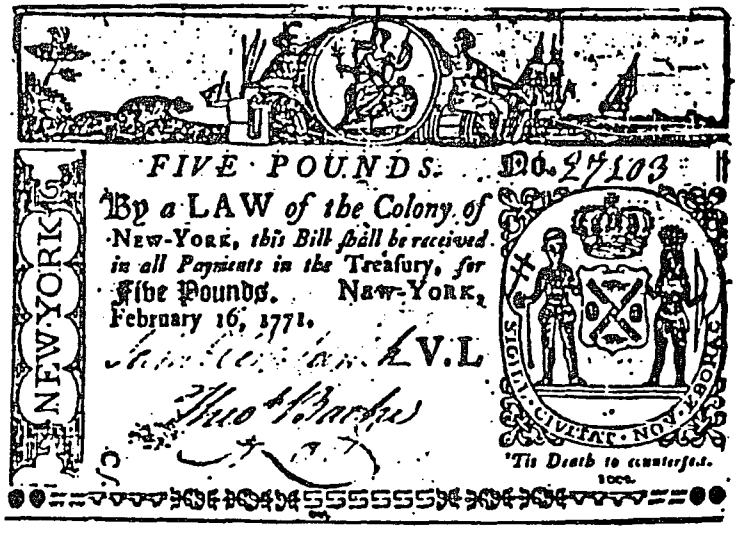
After this 1753 enactment regarding metallic currency, legislation again refocused on paper currency. Beginning with the July 21, 1746 emission of Bills of Credit, and until the September 2, 1775 emission when it was discontinued, the words "It's (or 'Tis) Death to counterfeit this Bill" were inserted under the Arms of the City of New York (see Illustration 4) in an attempt to suppress potential counterfeiting activities. Apparently this, and the other various counterfeiting thwarts authorized within the texts of the legislation authorizing bill of credit strikings, were coming to be considered inadequate, for on July 9, 1756 a special act was passed that focused exclusively on paper counterfeiting.

Though specific coin counterfeiting statutes had been enacted, this was the first time that paper counterfeiting received its own statute, rather than being addressed within the

Illustration 4: New York Bill of Credit

February 16, 1771

£120,000 in Bills of Credit receivable for taxes pursuant to an Act originally passed in 1769, reenacted on Jan. 5, 1770, revoked by the Crown on Feb. 14, 1770 and reenacted Feb. 16, 1771. Decorative top border, left border, and Arms of New York City cut by Elisha Gallaudet who also made the cuts for the New York City Water Works notes, the Feb. 17, 1776 Continental Currency fractional issue, and the dies for the 1776 Continental Currency coinage. The left borders read upward except for the £10 which reads downward to deter alteration. Printed by Hugh Gaine on thin laid paper. Due to extensive counterfeiting followed by a suggestion in a newspaper, separate backs showing three counterfeiters on the gallows were authorized in March 1773 to be pasted on all genuine bills in circulation, but this was never done. Signers were Theophylact Bache, Walter Franklin, Henry Holland, A. Lott, and Samuel Verplanck.



• SOURCE - Newman, E.P. (1990). The Early Paper Money of America.

text of another (e.g. currency emission) enactment. Increasing numbers of false bills were being presented to authorities, more counterfeiters were being brought to trial, currency emissions were being recalled, citizens were finding themselves in possession of suspect bills which merchants were refusing to accept, frequent articles were appearing in New York newspapers warning of circulating counterfeit bills and advising readers what to look out for, and one of the most notorious counterfeiters in colonial New York, Owen Sullivan, had been captured (Scott, 1953). "An Act more effectually (sic) to Suppress and prevent the Counterfeiting of the Paper Currency of this Colony," provides an excellent example of a specific court case (that of Owen Sullivan) driving legislation.

In April 1756 Sullivan was tried and convicted in the Supreme Court of New York for counterfeiting New York bills of credit. He was sentenced to be hanged in May. According to the May 17, 1756 issue of the New-York Gazette, or Weekly Post Boy, which recounted the dying words of the condemned villain, Sullivan declared that he had struck off huge amounts of bogus bills of several colonies:

> ...And of the New-York Currency he printed large Sums of four different Emissions...to do which he had four Sets of Accomplices, who...printed and passed other large Sums at Times unknown to him. And that he left the several different Plates and Stamps with his Confederates, all of whom he allow'd deserv'd the Gallows as well as himself; but would not betray one of them, or be guilty of shedding their Blood...Soon after which he took a large Cud of Tobacco, and turning round to the People said, I cannot help smiling, as 'tis the Nature of the Beast. And being ask'd, for the Benefit of the Publick (sic), of what Denomination

the Bills were which he printed of the New-York Money, answered, You must find out that by our Learning; and so died obstinate (New-York Gazette, or Weekly Post Boy, p. 3). (See Illustration 5.)

Aware that Sullivan had left his plates and stamps with his confederates, legislators would use this information, as perimeter thwarts, within the text of their July 9, 1756 enactment aimed at suppressing paper counterfeiting:

> ...Whereas it appears by the Confession of Owen Sullivan...that there are sundry Plates Engraved in imitation...of the Plates of this Colony and many other Implements and Materials concealed by his accomplices in order to carry on that pernicious Practice...And whereas the well-being and preservation of this Colony does in a great measure depend on the good Credit and Reputation of its Paper Emission Be it therefore Enacted...that if Any person or Persons Shall be detected in Concealing or aiding to Conceal Such Plates Bills Materials or Implements or any of them Shall be found in her her or their possession...or any Person...Shall Engrave or otherwise Contrive any such Plate or Plates Materials or Implements or in any wise (sic) aid or assist in Counterfeiting the paper Currency of this Colony Such Person Shall ...(being thereof Convicted) Suffer the pains OF Death without benefit of Clergy...(Colonial Laws, IV: 92-93).

Enacted to protect the "Credit and Reputation" of New York's currency, the wording of this statute makes it clear that the creation, concealing, or assisting to create or conceal (perimeter thwarts) counterfeiting tools would be regarded as capital offenses. Accomplices and major perpetrators alike would face the gallows (penal thwart). Lawmakers, viewing currency frauds as a growing social danger, were incrementally increasing the variants of counterfeiting that would be regarded as capital crimes.

We have no way of knowing how many counterfeiting accomplices were aware of this 1756 statute, of whether it reduced accomplice

Illustration 5.

Newspaper Account of Counterfeiter's Gallows Statement

...whom our Men im-
they quitted their Horses, and
them about a Mile and a Half,
is Company, came near one of
and fired at Cresslop. he at the
That Cresslop was shot through
nd three Swan Shot and expired
that the Indian was wounded.
e other two Men ran up on him
him. Our People then buried
o the Fort, and on their Way
a large Body, thought to be long
d supposed to be upwards of
ed out of the Road, and so

ptain Savage, from Salem, In
ort, was cast away on Gree
e First Instant.
delphia, Inward Entries.
lle on Delaware. P
ety from St. Christ
radford from S
Todd, and

ARK
ARLE.
ernor in t
and the *Ding*
Vice-A *c.*

AMA A.

rol Assembly of this Province
to Tuesday the 25th Day of
ght fit for his Majesty's Ser-
ill I do with the Advice of his
further adjourn the said
ay the first Day of June next
proceed upon Business: Of
ects concerned therein are to
emselves accordingly.

and Seal at Arms, at Fort-
New-York, *the fifteenth Day of*
twenty-ninth Year of the Reign of
ORGE *the Second, By the Grace*
Britain, France *and* Ireland,
Faith, and so forth.
CHARLES HARDY.
and,
Secry.
the KING.

l at Philadelphia from London
and two Days, but we don't
t any News particular. She
leven French Men of War be-
nder the Boston Head, so that
they sail.
in England the Fourth Day of

d, Mrs. Abigail Franks, Wife
this City, Merchant.
at Carrying Place dated April
nd the Coast clear of Enemy: The
with Provisions are returned, and
me with another Supply: We have

and produce to John Robinson, Esq; the Persons or Heads of King SHINGAS and Capt. JACOBS, Chiefs of the Delaware Indian Nation; or Fifty Pistoles for each.

The Representatives of the Freemen of the Counties of New Castle, Kent and Sussex, on Delaware, being moved by a Sense of Duty to His Majesty, and being concerned for the Safety and Security of [illegible] Constituents, have passed an Act for establishing [illegible] in that Government; whereby they o[illegible] e Person between the Age of seventeen [illegible] inlist under [illegible] officers and to fur[illegible] with a well [illegible] Musk[illegible] ce [illegible] and Priming Wire, [illegible] Car[illegible] and Ball suitable, and [illegible] ...ments to be form'd as fo[illegible]

...rieve, arrived here from the ...nforms, That Capt Ebbets in ...in turning up from the Bay to go ... was met by a Guarda Costa, who ...im an Anchor and Cable, which Capt. ...ng, the Spaniard seized his Sloop, and car-...to Port-Mahon.

...are told there are upwards of thirty Sail of Eng-Vessels in the Bay.

Owen Sullavan, before he was turn'd off on Monday last, declared, That some Years ago he struck off near Twelve Thousand Pounds of the Rhode-Island Money, and passed above Sixteen Hundred of it in one Day:---That of the New-Hampshire Currency he made Ten or Twelve Thousand Pounds:---Of Connecticut Cash he struck off about Three Thousand Pounds:---And of the New York Currency he printed large Sums of four different Emissions; the last of which was the Bills signed *Oliver De Lancey, John Livingston*, and *Isaac De Peyster*, and dated so late as March 25, 1755; to do which he had four Sets of Accomplices, who, he said, printed and passed other large Sums at Times unknown to him: And that he left the several different Plates and Stamps with his Confederates, all of whom he allow'd deserv'd the Gallows as well as himself; but would not betray one of them, or be guilty (he term'd it) of shedding their Blood:---Soon after which he took a large Cud of Tobacco, and turning round to the People said, *I cannot help smiling, as 'tis the Nature of the Beast.* And being ask'd, for the Benefit of the Publick, of what Denomination the Bills were which he printed of the New-York Money, answered, *You must find out that by your Learning*; and so died obstinate.

We think the following no unfit Piece to help out this Week's Paper, considering the approaching Fast.---It was delivered by a learned Doctor in England, in a Discourse preparatory to the Religious Observance of February 6, *the general Fast Day in* Great-Britain. *After speaking of the unhappy Disaster at* Lisbon, *the Doctor says,---*

ACT in the same Manner, as you would have thought it reasonable to act, if you had seen the *naked* Arm of God scattering Death and Ruin over the Heads of their sinful People. If you would have repented *then* do it *now*. Days of Fasting receive all their Worth from the Mind or Spirit that accompanies them: and as this Event is the greatest Call in its Kind which has been known in the Memory of any Person living, or (I think) recorded in History; I should hope the Solemnity will be proportionable. I do not think that we

TO-MORROW [illegible] at publick Ven[illegible] Half and Quarter Ca[illegible] Holland, and Russia D[illegible] One Cask of Brandy, [illegible] Arrack, and one Cas[illegible] condemned in the Supreme[illegible]
The Sale to begin at [illegible]
Custom-House,

Schooner Trumpeter[illegible]
Sloop John, John Gil[illegible]
Sloop Catherine Obad[illegible]
Sloop Dolphin, John [illegible]
Schooner Ruby, Thom[illegible]
Snow Catherine, Jol[illegible]
Ou
Schooner Trumpeter[illegible]
Sloop Molley-Mason, [illegible]
Brig. Power, James Fa[illegible]
Sloop Charles-Town, [illegible]
Snow Blagog, Isaac She[illegible]
Clear
Sloop Martha and M[illegible]
Sloop Polly, Andrew [illegible]
Brig. Katey, David Ba[illegible]

TO *be* SOLD [illegible]
Chair: Enquire of [illegible]

A *Handsom Case of* [illegible]
to be sold cheap: [illegible]
in the Fly, at the Sign of [illegible]

TO

A *Likely young Negr* [illegible]
has had the Sma[illegible]
either Town or Country.
that She breeds too fast f[illegible]
convenience. Enquire of [illegible]

JUST imported, and to [illegible]
opposite

A Small Parcel of v[illegible] also very good [illegible] Brandy,--West-India R[illegible] dry Colours,--and Win[illegible]

WHEREAS DAVI[illegible]
Corporation of [illegible]
Jersey, in April 1755, [illegible]
tation of about 10[illegible] *Acre*
aforesaid County and Prov[illegible]
three Miles of the City of [illegible]
the high Road between tha[illegible]
as the said David is appr[illegible]
cumbrances upon the said
gages, &c. which the sai[illegible]
at the Time of sealing and
NOTICE *is hereby give*[illegible]
they are hereby desired to [illegible]
said David Devoe, *living*
Day Three Months, that p[illegible]
ly, otherwise the Claims
gust to greater Difficulty in
to with Regard to said Plan[illegible]

JOHN HANSEN *inten*[illegible]
desires all Persons that

SOURCE - New-York Gazette, or Weekly Post Boy, May 17, 1756.

input in paper counterfeiting, or of whether it made abettors more cautious and less subject to apprehension. According to court records and newspaper reports (see following chapter), paper counterfeiting was growing into a gang (organized crime) endeavor. We can assume that certain gang members served as accomplices to other gang members, performing the exact roles the 1756 act hoped to curtail. Court records do not show any cases of a defendant being tried specifically for assisting to create or conceal counterfeiting implements, but it is likely that such acts were subsumed under the more general indictment of counterfeiting.

From 1756 to 1763 New York was involved in the French and Indian War, and several currency emission statutes were passed to assist the funding of military efforts. All these enactments provided for intricate currency designs to thwart imitations, and for the same punishments of counterfeiting acts as did the currency authorization statute of December 16, 1737.

Included were the, by now, standard death penalty warnings against counterfeiting, altering, and passing of counterfeited or altered bills. Also included in each enactment was the 1737 (perimeter thwart) provision that offenders guilty of these acts, but operating outside of New York colony (e.g., passing a New York bill of credit in New Jersey) were subject to the same treatment as offenders operating within the colony.

The July 3, 1759 statute, though similar to the others passed

to raise funds for the French and Indian War, was the first to change the warning under the arms of New York from "It's Death to counterfeit this Bill" to "'Tis Death to counterfeit this Bill." No explanation of the wording change appears (Is 'Tis a better word for thwarting would-be counterfeiters that It's?). It may have something to do with the fact that in 1759 the commission for the printing of the colony's bills of credit was transferred from James Parker to William Weyman.

In the March 24, 1766 issue of the New-York Mercury readers were informed about a new malpractice regarding counterfeiting - one that was not yet considered a felony, and thus was a relatively non risky offense. The piece told of a man named John Davis who "...lately brought into this Government (New York colony) a large Quantity of New-Jersey Bills of Credit, printed in England." According to this piece "...upon searching it was found he (Davis) had about him no less than £3500 of that Cash, all signed by himself, but he declared he never had passed any of it (New-York Mercury, p. 2)." Apparently, Davis was operating with out-of-colony (New Jersey) bills in New York where the bills of neighboring colonies were accepted as legal tender.

The Manuscript Minutes of the Supreme Court of Judicature of New York indicate that on April 22, 2766 Davis was indicted for "deceit" in passing counterfeit New Jersey bills in New York (Ms. Mins. SCJ 1764-1766, p.380). According to subsequent entries in

the Minutes of the SCJ, Davis did not act alone, but was involved with a group of 'passers,' several of whom were also indicted. It is quite probable that it was the activities of these men that led the New York assembly to pass, on July 3, 1766, "An Act to make it Felony without Benefit of Clergy to counterfeit the Bills of Credit of any of his Majesty's Colonies which pass in Payment in the Colony of New York."

Whereas the December 16, 1737 currency emission statute had included a (perimeter thwart) clause declaring it a felony to operate outside of New York with New York bills; now a specific counterfeiting statute would address the issue of counterfeiters operating inside New York with out-of-colony bills. Just as counterfeiters, perhaps heedful of new enactments, had modified their behavior to increase their legal advantage, legislators modified their laws to keep up with those whom they considered obstructive to the colony's financial stability.

The July 3, 1766 enactment, seemingly triggered by the activities and indictment of Davis and associates, stated (using a series of perimeter thwarts) that:

> ...Whereas many evil disposed and wicked Persons have lately counterfeited, and circulated in this Colony, large Parcels of Bills, in Imitation of the true Bills ...Issued in the Colony of New Jersey...Be it enacted...That if any Person or Persons shall hereafter counterfeit any the true Bill or Bills of Credit now or which shall hereafter be Struck emitted and issued in the said Colony of New Jersey; or ...in any other of his Majesty's Colonies, or shall alter any the said Bills of Credit, so that they shall appear to be of greater Value than the same...or shall pass or give in payment any such counterfeit or altered

Bill...knowing the same to be Counterfeit or altered (such persons) shall be guilty of Felony, and being thereof convicted, shall suffer the Pains of Death...without the Benefit of Clergy...(Colonial Laws, IV: 906).

This enactment may have reduced the counterfeiting, altering, or passing of out-of-colony bills in New York. The Manuscript Minutes of the New York City Court of Quarter Sessions, Book 4: 1760-1772 lists the continuous flow into court of numerous fraudulent New York bills, but makes no mention of bogus out-of-colony bills being turned in. Though providing limited data as to amounts and names, newspapers warned readers about counterfeit out-of colony and New York bills, and coinage, circulating within New York, and indicated that counterfeiting has grown into an intercolonial gang occupation with large numbers of perpetrators working throughout all the American colonies.

The New-York Gazette, and Weekly Mercury of February 15, 1768 reported that a schooner had been docked in Fairfield, Connecticut for six weeks with "...5 Men on board, that they had passed some counterfeit York Bills, that they came from Rhode-Island..." Upon searching the schooner, officials "...found Gideon Casey, and his two Sons...also a small Bag containing all the Instruments for coining and milling of Dollars...Instruments for making Pistereens, and several Forty Shilling Bills of this (New York) Province...They were all committed to Gaol, and being examined, Casey said, that some of the bad Bills were passed in this City but that all the Instruments were left in his Possession about

three Years since, and given to him by one Howe, a noted Money Maker from Boston Government (New-York Gazette, and Weekly Mercury, p 3.)."

This same newspaper, on April 18, 1768, in reporting Howe's arrest in New Hampshire on suspicion of counterfeiting coins, stated, "It is said there is a Clan of these Gentry of at least 500, who correspond thro' all the Colonies, as far as North-Carolina. Howe denies being concerned in manufacturing any money, but acknowledges he lets out certain Tools at ten Dollars per Day (New-York Gazette, and Weekly Mercury, p. 3)."

On February 16, 1771 another law was passed authorizing the issuance of bills of credit (see Illustration 4). This emission, created to meet an increase in the colony's debts and the need for circulating currency, was for £120,000. This was the largest of all the currency issuances of New York. It contained the same counterfeiting provisions and warnings as the December 16, 1737 enactment. Like the bills of the 1737 emission, the bills of this 1771 issuance were also widely counterfeited.

According to the June 17, 1771 issue of the New-York Gazette, and Weekly Mercury every denomination of the February 16, 1771 emission had been counterfeited, though the printer (Hugh Gaine), who was also publisher of the newspaper, had "...not yet had an Opportunity to note and describe the Marks of Distinction between the true and counterfeit Bills of each Value, but in general it

may be observed that the true Bills are printed with Printing Types, the Counterfeits with Copper-plate, the Letters of which are disproportioned in Size and Shape, and stand irregularly, easily discernable by nice Inspection...(New-York Gazette, and Weekly Mercury, p. 3)."

In a piece headed "COUNTERFEITS," the New-York Gazette, and Weekly Mercury of October 5, 1772 reported that quality counterfeits of the 1771 emission were circulating that were "...so well executed that it requires the greatest Care to discover them from the true Bills...(New-York Gazette, and Weekly Mercury, p. 2)."

On November 9, 1772 this same paper reported that "...no less than 9 Men were committed to Gaol in Albany, on suspicion of being concerned in counterfeiting our last Emission of Paper Money (1771 bills)...and many bad Dollars (coinage), with Instruments for operating on both, were found in their possession...(New-York Gazette, and Weekly Mercury, p. 2)." And, according to the Manuscript Minutes Council (1772, 26: 333-334), eighteen people were indicted in Albany for counterfeiting or knowingly passing false bills of credit and Spanish dollars (probably the 9 mentioned in the newspaper were among these 18).

In 1773, legislators, seemingly alarmed about the growing organizational aspect of counterfeiting, and the large number of

counterfeits of its latest emission (and aware that their previously mandated techno-, perimeter and penal thwarts weren't frightening off a sufficient number of perpetrators), tried a new tack - the creation of a special anti-counterfeiting statute containing, among other provisions, techno-thwarts aimed at the plates used in the creation of bills of credit.

On March 8, 1773 "An Act to remedy the Evil this Colony is exposed to from the great Quantities of counterfeit Money introduced into it" was passed that began by mentioning the threat of counterfeiting to New York's credit and commerce, and went on to mention the extensive counterfeiting of the February 16, 1771 issue and to order technological deterrents, along with perimeter and penal thwarts:

> Whereas the Credit of the paper Currency of this Colony hath been of late greatly injured by the flagitious Practices of artful and wicked Men who have counterfeited and altered Bills knowing the same to be counterfeited and altered: And as it is of the utmost Importance to the trade and Interest of the Colony to prevent the Mischiefs arising from the circulation of counterfeit Currency; and as it may tend greatly to defeat the Designs of the Counterfeitors if the true and genuine Bills be distinguished from such as are false and Counterfeited...Be it therefore enacted...That the Treasurer of this colony for the Time being, Samuel Verplank, Theophilact Bache, and Walter Franklin...are hereby constituted Commissioners, and authorized to cause such plate or plates, and Device or Devices to be formed and engraved as they shall judge to be most difficult to be immitated (sic) and counterfeited as they or the major Part of them may think proper; and forty four thousand Copies thereof to be struck off upon thin paper to be pasted, glued or affixed to each of the Bills emitted by the Act aforesaid (the 1771 emission statute))...
>
> And be it further enacted ...That the Person by whom the said plate or plates shall be made, shall deliver the same to the said Commissioners...and then take an Oath, that the Plate or Plates...hath or have not been out of his Custody...and that he

hath not made...any imitation thereof...

And be it further enacted...That as soon as the above number of Copies are struck off, the said plate or plates shall be melted down in the presence of the Majority of the said commissioners.

And be it also enacted...That the said paper Copies so to be made of the said plate or plates shall be lodged with the said Treasurer who shall...affix one Copy to the reverse Side of each of as many of the said Bills of credit as may be presented to him...And in Case any of the Bills tendered to have such Device affixed...shall appear...to be suspicious, he shall call to his Assistance the other Signers of such Bills...to inspect and determine...

And be it further enacted...no Bill of Credit shall pass for...a Bill of Credit...until it shall have on the reverse thereof a Copy of such plate or plates...

Be it further enacted...That there shall be given and paid to such Person or Persons as shall apprehend any felonious Offender or Offenders...such Sum or Sums as the Governor...with the Advice and Consent of the Council shall promise by Proclamation...and that all the Rewards so to be promised by Proclamation do not exceed the Sum of two hundred Pounds...(Colonial Laws, V: 510-513).

This 1773 statute, like those preceding it, demonstrates that colonial New York lawmakers perceived of counterfeiting as a growing danger to the colony's commercialization process, and tried various new legislative thwarts to suppress it. Now, rather than focusing, legislatively, on where the counterfeiters operated, or on what bills were passed where, or on the making and concealing of plates, the complexity of the plates used was addressed. If plates were made so as to be "difficult to be imitated," perhaps counterfeiting could diminish.

With the conclusion of the Revolutionary War, responsibility for the production of difficult-to-imitate plates, and a national currency, would fall upon the federal government. However, it would take quite some time, and the creation of a special

government agency (the United States Secret Service) before counterfeiting would be substantially controlled in New York, and in the other American states where it was an even greater problem.

Preceding federalism, with the outbreak of the Revolutionary War counterfeiting would become a British weapon, an act of state sponsored economic terrorism used throughout all the American colonies. The British and the loyalists counterfeited the currency of their American opponents in order to undermine the Continental economy; and their tactics, added to those of the criminal counterfeiting gangs already in operation, contributed largely to the utter collapse of the continental currency (Scott, 1953).

Apparently the British felt justified enough in their counterfeiting tactics to advertise for helpers. In an effort to quickly destroy the Continental currency through the distribution of free counterfeits to potential passers, a notice was placed in the April 14, 1777 issue of the New-York Gazette, and Weekly Mercury that read:

> Persons going into other Colonies may be supplied with any Number of counterfeit Congress-Notes, for the Price of the Paper per Ream. They are so neatly and exactly executed that there is no Risque (sic) in getting them off, it being almost impossible to discover, that they are not genuine. This has been proved by Bills to a very large Amount, which have already been successfully circulated. Enquire for Q.E.D. at the Coffee-House, from 11 P.M. to 4 A.M. during the present month (New-York Gazette, and Weekly Mercury, p. 3.).

Conclusion - A Legislative Response to Rising Crime

This chapter has shown that accompanying the growth of

commerce and counterfeiting in colonial New York was the development of 'Thwart Law' as a mechanism of crime control. Increased counterfeiting accompanied modernization and a continually changing body of law emerged to deal with the threat. The introduction and incidence of thwart law in the colony is an indicator of increasing counterfeiting frauds in the developing economy, a growing societal perception of counterfeiting as a serious risk to commercialization, and a legislative body interested in thwarting, as well as punishing, a threatening property and political crime.

Throughout the eighteenth century, and prior to the American Revolution, the anti-counterfeiting enactments of New York incrementally became more specific and more severe. A look at the laws themselves, at newspaper accounts discussing currency frauds, and at the history of the period informs us that increasing evidence of counterfeiting, mounting case law, new twists in an old crime, and burgeoning citizen and governmental fear for the colony's commercialization efforts sparked statute law.

Unfortunately, there is no way we can know the discussions that might have preceded the passage of the various statutes, or if the anti-counterfeiting enactments were passed with little or no debate. What could be called the legislative histories on colonial statutes were very limited by current standards. The Journal of the Legislative Council of New York, the Minutes of the Common Council of the City of New York, and the Journal of the

General Assembly of the Colony of New York tell us more about the mechanics of how counterfeiting legislation was enacted (e.g., the presenting of a bill, the passing of it in the Legislative Council, and the sending of it to the Assembly for "concurrence") than about any discussions that took place regarding the actual content of the law. (Bill Jackets, which contain the latter information, were a post-Revolutionary War elaboration.)

The various counterfeiting thwarts written into the laws of colonial New York summarize socio-economic changes -- decline of barter, increase in the need for coinage, scarcity of money, introduction of paper currency, currency transformation from real to representative, commercialization, growing mobility, growth of organized counterfeiting gangs -- that were occurring within the colony, and to which legislators appeared to be responding (we have no record of any debates which may have occurred). Though initially the general populace did not understand the danger counterfeiting posed to a new economy, mounting amounts of bogus currency in circulation, increasing overvaluation and rejection of certain coins and bills, and a vigilent series of newspaper pieces warning of circulating fakes, created public awareness that fraudulent money was likely to be detected and refused in commercial transactions. This awareness led to creative legislation designed to frustrate would-be 'passers' and close up legal loopholes discovered by clever 'professionals' and gangs.

CHAPTER VI: THE RECORD SHOWS.....

The language of the counterfeiting laws of colonial New York is often precise and fiery. Not only are explicit thwarts written into the texts of the various enactments, but offenders and punishments are routinely described in traditional common law verbiage of venom and vengeance. Those partaking of criminalized behavior are "evil disposed persons" who are "encouraged and imboldened dayly" to engage in acts for which they deserve to "suffer the pains of death without benefit of clergy." The law is written unequivocally, severely, unconditionally, often repeating the same terms and expressions used in preceding statutes; but is what appears on official paper an accurate reflection of how most colonial New Yorkers actually regarded and treated counterfeiters?

A partial answer to this question can be gotten from an examination of the court records of counterfeiting cases tried in colonial New York. When an individual was charged with a counterfeiting violation what happened to him or her? If the law said that a particular variant of counterfeiting was a non-pardonable capital offense, were those convicted of such activity really executed? As we will see, sometimes they were; often they were not.

Though providing some answers and insights, colonial New York court minutes regarding counterfeiting cases can not be regarded as definitive. Due to fires, water damage, and general mishandling, only a portion of them have survived, with some counties having no extant records. Even where records exist, they are often incomplete, skimpy, and non-conclusive.

The court cases discussed in this study are based primarily on records of the trial courts of New York Sessions and the Supreme Court of Judicature, as these are the most complete record sets available. The New York Sessions records run from 1691-1775; the Supreme Court of Judicature records run from 1691-1714, 1723-1739, and 1750-1776. Discussion of these records will be expanded, wherever possible, with facts gathered from secondary sources and supplementary primary sources such as New York Colonial Manuscripts, the Minutes of the Governor and Council of New York Province, and colonial newspapers.

Ninety-nine cases, spanning the years 1680-1776, have been examined for this study. These are all the cases on record, cases which were reported and tried in courts whose minutes are still available to researchers. As discussed in chapters IV and V, they represent only a small percentage of the actual number of violations that occurred. 'White-collar' crimes, such as counterfeiting, often go unreported because victims are frequently unaware of their victimization; and, even when such crimes are reported, offenders often are not apprehended and tried.

As we shall see, the ninety-nine cases presented here provide little scope for statistical analysis, but enough information does exist to learn something about the types of individuals indicted for counterfeiting, the specific variants of the activity in which they engaged, how relevant prevailing statutes were to cases presented, patterns of prosecutions, dispositions, and sentences. Only trial court cases are used: appellate litigation in counterfeiting cases was non-existent in colonial New York.

To Appeal Meant to Retry

The Decennial Digest (1658-1880) lists no leading cases of any variant of counterfeiting fraud. Though there was a Chancery Court within New York for equity jurisdiction, and though works such as Smith's Appeals to the Privy Council from the American Plantations document the existence of judicial appeals from the colonies to England for questions of finance (such as the

depreciation of paper currency), no records appear of appellate litigation, in any of the colonies, for counterfeiting acts.

In colonial New York to 'appeal' generally meant to respond to an indictment in one court and request that the case be retried and/or boundover to another court or court session in order to give the defendant time to produce witnesses, or exculpatory evidence, (or to flee the colony).

When counterfeiting cases were retried there was no review of specific procedural issues or points of law. Cases and opinions were not appealed, written, filed or cited in the contemporary sense. Explaining the basis of court jurisdiction, and the appeals process in colonial New York, Goebel (1933: 260-261), referring to the colonial statutes establishing the New York court system, says:

> The chief court of the province was established as the supreme court of judicature. To hold this court at New York City...five justices at least were to be commissioned, of which two, together with the chief justice, were to constitute a quorum. The supreme court was to have cognizance in all cases civil, criminal and mixed...In this supreme court could be begun, or to it removed, any action or suit...being upward of twenty pounds.

Grappling with the concept of appeal in New York colony, Goebel goes on to admit:

> The statute is not clear on the limits of criminal jurisdiction. It provides for the removal by warrant, writ of error or certiorari of judgments, indictments or informations from common pleas or sessions...and gives the supreme court power to correct errors in judgment or to reverse the same. At this same time, in England, a writ or error did not lie as of right in criminal cases. The New York act, therefore, must be understood to confer upon the supreme court no more than the power...to remove

by certiorari indictments or informations from the country to be heard en banc...the language of the act of November 11, 1692, enacted to continue the 1691 statute, bears out this interpretation.

Clarifying the issue of how the Supreme Court of Judicature, based in New York City, would handle cases in outlying areas of the province, where defendants were unable, or unlikely, to travel to New York City, Goebel says:

> Provision was made for a justice of the supreme court to 'goe the circuit' once a year in each county of the province and to hold the supreme court assisted by two or more justices of the peace...the judge on circuit was...to hear both civil and criminal causes, but in practice, following the English usage, (would) function in the latter case.

Goebel closes his explanation of colonial New York's jurisdictional set-up, and appeals process, by comparing New York's use of Sessions courts (for non-capital crimes) and the Supreme Court of Judicature (for capital offenses) to practice followed in England:

> In England...the quarter sessions courts were competent to try practically all felonies. Nevertheless, as a matter of practice in the late seventeenth and during the eighteenth century, capital cases were not there tried, but the prisoner was held for the assizes...An examination of the remaining records of the New York supreme court indicates that the criminal jurisdiction of that court was built up roughly on this pattern. The defendant would be normally tried at sessions, yet by certiorari (capital cases) could be removed to the supreme court, and...trial would take place at the circuit term.

British law guides containing common law decisions by the King's courts (e.g., Edward Coke's Institutes) may have been consulted in New York trial court cases in either the sessions courts or the supreme court of judicature, but legal encyclopedias

that guide later appellate judicial decisions were not used in colonial New York. Eighteenth century references such as British legal scholar Matthew Hale's History of the Pleas of the Crown, one of the earliest principal authoritative works on the common law of criminal offenses, were unavailable to the lawyers of colonial New York.

Discussing the appeals process in colonial New York as primarily the outcome of judicial mistake in previous civil hearings (given that the Governor and/or the Crown had reprieve power in criminal cases, with no writ of error existing), Goebel and Naughton (1970: 228-239) explain:

> "The expression 'cases of error' can, in the case of New York, only refer to causes brought up by writ of error to the Governor and Council...
>
> ...In England review of causes criminal by writ of error was rarely had...even where the Crown consented that a writ of error be brought, only the record (indictment, plea, verdict, etc.) came up for review and not that part of the proceedings which were likely to have been most prejudicial to the defendant...
>
> ...an opportunity was left open in treasons and murder for the Crown to exercise its prerogative of pardon...
>
> ...But in the Judicature Act of 1683 which constituted the Governor and Council a Court of Chancery to be 'esteemed and accounted the Supreme Court of the Province, a general right of 'appeal' was granted from 'any judgment or decree' (of lower courts)...but the language of the act shows that only civil cases could have been embraced in this provision...
>
> ...The essence of the Governor's power in criminal cases was executive. Since recourse in treason, murder and large fines was directly from the trial court to the Crown, the Governor was authorized only to grant the necessary reprieve, or in the case of fines over over £200 to 'permit appeals.' The Judicature Act of 1691 added nothing to this power."

Criminal Pardons in Colonial New York

The concept of pardons in colonial New York was especially

significant because, given the nature of the appeals process at that time, once a defendant was convicted of a capital offense in the Supreme Court of Judicature, a pardon or reprieve were the only legal recourse he had for avoiding the gallows. A convicted felon could not claim that his 'rights' had been in some way violated (e.g., that the constable who discovered him counterfeiting bills of credit entered his house without a search warrant), and therefore the court's decision was invalid.

Discussing the various final proceedings of the judicial process in New York colony, Goebel and Naughton explain:

> The ultimate mercy of the law for the felon was the pardon which traditionally was a matter of royal prerogative. Consequently the powers of the courts were limited to recommendation or to stay of execution pending some notice of executive pleasure. The prerogative was delegated to the Governor by the terms of his commission as to all offenses except treason and 'wilful murder' (1970:754)." (In cases of treason and 'wilful murder' the power to pardon legally belonged to the Crown; but it should be noted here that although counterfeiting came to be regarded as an act of treason, pardons were issued by the governor or his council.)

Goebel and Naughton go on to reveal that there was often cooperation between the executive and the judiciary, with judges recommending pardons, and the governor or crown acting upon the recommendation. Yet, they stress, the fact that a pardon was an act of executive prerogative "...left the courts only a mere advisory function." Essentially, the court was limited in its powers to punish. "Where a defendant secured a pardon in advance of trial, he could...plead it and be discharged. And after

conviction,...if there was any reason to suppose a pardon might issue, the court would not sentence until a later term (1970: 756)."

Although there existed no appeals process in the contemporary sense, and the decision to pardon legally resided in the executive branch of government, a convicted felon was not totally dependent on the governor or Crown for reduced punishment or the saving of his life. The trial court judge could be, and sometimes became, the convicted defendant's savior by deliberately delaying sentencing (sometimes as an act of mercy, or out of reluctance to order execution, but also in order to sweat out information about accomplices) long enough for him to muster up sufficient support for a pardon, or to escape imprisonment. Discussing the true possession of the power and purpose of reprieves and pardons, Goebel and Naughton (1970: 755-758) contend:

> It should be noticed in connection with reprieve that, as a practical matter, the courts themselves had worked out what amounted to a coordinate power since it was possible to respite the imposition of a sentence, or in sentencing to omit directions as to the time of execution...
>
> ...Except as to the crimes reserved by the Crown, prerogative of pardon was presumably to be exercised by the Governor himself; yet as the eighteenth century wore on, pardon cases came to be handled in Council as a matter of routine...
>
> ...The advisory function of the judges, already mentioned in connection with reprieve, is poorly attested during the early period of provincial history, but there is considerable evidence when pardon cases came to be regular Council business. As a rule pardons were sought by petition and where there was cause the judges would write in support. Sometimes outsiders would intervene...The French and Indian War, it may be remarked, was a great stimulus to the springs of mercy, for during this period the pardoning power was used as a means of recruiting his Majesty's

armed forces... "

The Prosecution Process

Before examining the ninety-nine recorded counterfeiting cases amassed for this study it is important to understand the manner in which counterfeiters were prosecuted in early New York. How were they detected and apprehended? Who indicted and presented them? What rights did they have at trial? What were the rules of evidence?

Detection and Apprehension.

Countefeiters were detected and apprehended both reactively and proactively. In the first instance, an individual receiving a suspicious coin or bill might question it, and, if unconvinced of its authenticity, refuse it and report the passer to local officials, or himself bring the passer and his fake offering before local authorities. If, after the fact, the recipient of fraudulent currency realized that he had been duped, he might report his victimization to town officials in the hopes that the passer would be tracked down and forced to make good on his false coin or bill.

As counterfeiting became a growing problem in colonial New York, with whole gangs getting involved in the activity and large amounts of fake currency being put into circulation, a more proactive approach to detection and apprehension was undertaken. Town officials directed sheriffs and constables to search out and

capture suspected counterfeiters. Newspapers warned readers of specific monies, and specific individuals, to beware of. The general citizenry was offered rewards for assisting in the capture and conviction of counterfeiters. Accomplices were offered pardons for providing information and evidence to authorities. As in the case of most non-violent, or white-collar, crimes, then or now, and as already mentioned, the majority of perpetrators were not detected or apprehended.

Indictment and Presentment.

During the period when New York was governed by the Duke's Laws, and up until the establishment of the Judiciary Act of 1683, little distinction existed between indictment and presentment. Both tasks were performed by the plaintiff, constable, or sheriff. Either an injured person would appear before a magistrate alleging the commission of a crime, and enter his accusation in the form of an affidavit, or the accused was called into court by a constable or sheriff who presented the defendant before a magistrate. There was no grand jury indictment, or trial by jury. Misdemeanors and serious crimes were handled summarily. Usually a fine and/or restitution was demanded. Discussing the seventeenth century judicial process, Goebel and Naughton (1970: 565) state:

> Not many cases came to trial, and when the defendants did not confess, the courts usually proceeded summarily, that is to say, no jury was used but witnesses were examined and the bench decided whether or not the defendant was guilty...Both parties would be heard - if the prosecutor did not have enough evidence he would be ordered to produce it. After this hearing, judgment would be

be pronounced...virtually no rules of evidence were followed.

After the Judiciary Act of 1683, grand jury indictments were substituted for presentments by plaintiffs, constables, or sheriffs, and the use of petit juries was introduced. Explaining this change in practice, Goebel and Naughton (1970: 571) say:

> ...magistrates no longer followed the former method upon presentment of examining the evidence until the prisoner saw fit to confess or they were satisfied to convict or discharge. Now the defendant was arraigned, the indictment was read and he was required to plead." If he pleaded not guilty, a "...petit jury was summoned and the trial then proceeded.

Defendant's Rights.

Defendants in felony cases in colonial New York did not have the now customary right to counsel. English law restrictions regarding this right were followed. Only on points of law could counsel appear in felony trials. The prevailing position was that the Crown was represented by a competent, objective, and fair Attorney General, a lawyer capable of providing the defendant necessary protection, and at the same time securing a conviction, if, in fact, the defendant had committed a crime against the state.

In misdemeanor cases an attorney could be used to appear for the defendant, enter a plea, argue motions, and, in general, protect the rights of his client. However, according to Goebel and Naughton (1970: 574), the defendant charged with a misdemeanor was no better off than one charged with a felony as, "...the usual defendant was quite unable to afford legal advice, and was thus

cast upon the good offices of the judges for help in conducting his case."

Compounding the problem of inability to afford counsel was the fact that convicted defendants in criminal cases were required to pay court and prosecutor fees. This requirement served to further decrease the likelihood of recourse to trial of accused persons who believed themselves to be innocent. The fact that they had a 'right' to a trial by jury was of little comfort if they had no means to come up come up with court costs if convicted.

In both felonies and misdemeanors defendants in colonial New York were given an opportunity to answer or object to the charges against them. A variety of pleas could be entered. In counterfeiting cases defendants generally either confessed the indictment or pled not guilty. In a few cases the record indicates that a defendant "demurred" (confessed to the facts of the indictment, but not to his or her guilt), or that a motion to "quash" (delay proceedings) was made. The motion to quash, if granted, could be advantageous to the defendant, as the record commonly shows no further proceedings in quashed indictments.

The words "recognizance" and "surety" appear frequently, and interchangably, in the court records of counterfeiting cases. Essentially these were behavior bonds, used for several purposes, that worked both to the benefit of the court and the defendant. Specified amounts were paid to the court to compel the appearance

of a defendant at a boundover trial, and/or as a means to ensure good behavior of the defendant for a specified period. Should such conditions not be met, the recognizance, or surety, was subject to 'estreatment'. In addition to being used to exact security, recognizances or sureties were also ordered as part of final judgments. From the court's perspective, such methods were preventive and punitive. From the defendant's perspective, the recognizance or surety kept him out of jail and permitted him time to prepare for trial.

Once at trial, character witnesses for the accused could be very influential, particularly at felony trials where defense counsel was not permitted. Testimony from character witnesses, and the defendant himself, was allowed, and encouraged, and could be pivotal. The record shows that in certain counterfeiting cases defendants were acquitted or pardoned not on the basis of their guilt or innocence, but because of how well they conducted their own defenses, or because compelling character witnesses came forth and evoked jury sympathy.

Rules of Evidence.

Just as a character witness(s) could be pivotal to an acquittal or pardon, witnesses for the Crown were critical to securing a conviction. According to Scott (1957: 67), "It was all but impossible to secure a conviction unless some member of a counterfeiting gang turned king's evidence. This was doubtless the

reason why counterfeiters sometimes drew up solemn covenants in which they pledged themselves not to betray their associates."

Although Scott makes a valid point, and although accomplices turned state's witness were a major source of evidence, it was not "all but impossible" to secure a conviction without them. The confession of the accused given, usually in advance of trial, in the hope of receiving a pardon was the strongest of all proofs; but, in several cases, a collection of angry victims identifying the defendant as perpetrator of one or another counterfeiting fraud provided sufficient evidence to convict. Hard evidence (e.g., plates, dies, stacks of bogus bills) found, by officials, in the possession of the accused led not only to convictions, but also, in two cases, to perpetrator suicides. Also, as the privilege against self-incrimination did not exist in New York until the creation of the Bill of Rights, a defendant's testimony was often significant in gaining the prosecution a conviction on one or more counts.

It is interesting that the precise and comprehensive wording of the anti-counterfeiting, and the various penal statutes, of colonial New York included nothing about the privilege of self-incrimination. Such omission, while denying a right Americans would soon come to enjoy, not only assisted New York in its efforts to bring counterfeiters to justice, but indirectly encouraged the colony's commercialization efforts. Addressing this

issue, Goebel and Naughton (1970: 657-659) comment:

> That a privilege against self-incrimination did not develop in a jurisdiction where the inhabitants were constantly rummaging in the storeroom of common law liberties, was the fault of neither the judiciary nor the bar, but was due to a prevailing indifference which is reflected in the general temper of provincial legislation...The failure to carry over notions about self-incrimination to temporal justice is apparent in the unending stream of penal statutes where the usual procedure stipulated was information to a magistrate and conviction by the oath of one or two witnesses or by the defendant's confession alone...this was a favorite device in New York recurring as it does with regularity in the provincial penal statutes.
>
> ...so far as New York Province was concerned there was no attempt made to privilege a defendant or to treat his testimony as incompetent; but on the contrary, a great deal was done to make sure that in one form or other his testimony would be secured and that it would count against him."

Such thinking guided counterfeiting, and other, trials in seventeenth and eighteenth century New York. Courts were not bound by the rules of evidence and exclusion that exist today.[1] Stressing this fact, Goebel and Naughton (1970: 628-629) explain:

> ...in the late seventeenth century criminal trials were hampered by few rules of evidence...The law of evidence...appears in the books still in the primitive stage...The first work of any analytic merit is Baron Gilbert's book published in 1754, but his examination of criminal cases is slight, and beyond emphasizing the relation of proof to issue is not a great improvement over other works...
>
> ...usages in New York with respect to problems of proof will have to be discussed chiefly in terms of trial practice rather than in terms of a "law of evidence" as this is today understood...we shall have to consider various matters which have no bearing upon the use of excluding rules but which have significance for the procedural system at large.

However problematic the rules of evidence that prevailed in colonial New York, verdicts were reached; and they were recorded in minute books. Whatever is to be learned about the evidence

[1] Theoretically, capital convictions could be obtained solely on the basis of the testimony of a co-conspirator (see top, p.288), however, the record shows that most convictions, and executions, were based on the testimonies of a variety of Crown witnesses.

behind any specific verdict must be gleaned from the relevant court records, and other surviving primary sources that may exist. As regards counterfeiting, it is from such sources that we learn something about those accused of currency frauds in a newly developing society of three hundred years ago -- who they were, the specific crimes they were charged with, and how they were treated by the judical system.

The following ninety-nine counterfeiting cases, examined individually, and as a whole, against the background of growing commercialization and legislation in New York colony, provide us some insight into the relationship between modernization and thwart law. Ninety-nine cases do not seem to be an ample number from which to generalize until we look at it in terms of overall population figures (see Table 6) and in terms of a comparison between counterfeiting and other crime categories (see Table 7).

Looking at the Cases

The earliest counterfeiting cases recorded in colonial New York (in the New York Colonial Manuscript Collection, as the court minute keeping system was not formally in place until after 1691) appear to be those of John Burrell and William Shore. In 1680 both men were presented by the then sheriff of New York for coining and passing imitations of Boston coinage in New York City. Burrell confessed and was ordered to make resitution and pay a fine. On

Table 6: Estimated Population of American Colonies: 1610 to 1780

Series No.	Colony	1780	1770	1760	1750	1740	1730	1720	1710	1700	1690	1680	1670	1660	1650	1640	1630
	WHITE AND NEGRO																
1	Total	2,789,240	2,148,076	1,593,625	1,170,760	905,563	629,445	466,185	331,711	250,888	210,372	151,507	111,935	75,058	50,368	26,634	4,646
2	Maine (counties) [1]	49,133	31,257												1,000	900	400
3	New Hampshire	87,802	62,396	39,093	27,505	23,256	10,755	9,375	5,681	4,958	4,164	2,047	1,805	1,555	1,305	1,055	500
4	Vermont	47,620	10,000														
5	Plymouth [2]										7,424	5,400	5,333	1,980	1,566	1,020	300
6	Massachusetts [1]	268,627	235,808	222,600	188,000	151,613	114,116	91,008	62,390	55,941	49,504	39,752	30,000	20,082	14,037	8,932	506
7	Rhode Island	52,946	58,196	45,471	33,226	25,255	16,950	11,680	7,573	5,894	4,224	3,017	2,155	1,539	785	300	
8	Connecticut	206,701	183,881	142,470	111,280	89,580	75,[illegible]	58,830	29,450	25,970	21,645	17,246	12,603	7,980	4,139	1,472	
9	New York	210,541	162,920	117,138	76,696	63,665	48,594	36,919	21,625	19,107	13,909	9,830	5,754	4,936	4,116	1,930	350
10	New Jersey	189,627	117,431	93,818	71,393	61,383	37,510	29,818	19,872	14,010	8,000	3,400	1,000				
11	Pennsylvania	327,305	240,057	183,703	119,666	85,687	51,707	30,962	24,450	17,950	11,450	680					
12	Delaware	45,385	35,496	33,250	28,704	19,870	9,170	5,885	3,645	2,470	1,482	1,005	700	540	185		
13	Maryland	245,474	202,599	162,267	141,073	116,093	91,113	66,133	42,741	29,604	24,024	17,904	13,226	[illegible]	[illegible]	538	
14	Virginia	538,004	447,016	339,726	231,033	180,440	114,000	87,757	78,281	58,560	53,046	43,596	35,309	27,020	18,731	10,442	2,509
15	North Carolina	270,188	197,200	110,442	72,984	51,760	30,000	21,270	15,120	10,720	7,600	5,480	3,850	1,000			
16	South Carolina	180,000	124,244	94,074	64,000	45,000	30,000	17,048	10,383	5,700	3,500	1,200	200				
17	Georgia	56,071	23,375	9,578	5,200	2,021											
18	Kentucky	45,000	15,700														
19	Tennessee	10,000	1,000														
	NEGRO																
1	Total	575,[illegible]	455,832	325,[illegible]	226,[illegible]	159,624	91,821	68,[illegible]	44,[illegible]	27,817	16,729	6,971	4,535	2,[illegible]	1,[illegible]	597	99
2	Maine (counties) [1]	458	475														
3	New Hampshire	541	854	600	550	500	200	170	150	150	100	75	65	50	40	30	
4	Vermont	50	25														
6	Massachusetts [1]	4,822	4,754	4,356	4,075	3,035	2,780	2,150	1,310	800	400	170	160	42	295	150	
7	Rhode Island	[3]2,671	3,761	3,468	3,347	2,408	1,648	543	375	300	250	175	116	65	25		
8	Connecticut	[3]5,885	5,698	3,783	3,010	2,598	1,490	1,093	750	450	200	50	35	25	20	15	
9	New York	21,054	19,112	16,340	11,014	8,996	6,956	5,740	2,811	2,256	1,670	1,200	690	600	500	282	10
10	New Jersey	10,460	8,220	6,567	5,354	4,366	3,008	2,385	1,822	840	450	200	60				
11	Pennsylvania	7,855	5,761	4,409	2,872	2,055	1,241	2,000	1,575	430	270	25					
12	Delaware	2,993	1,836	1,732	1,496	1,035	678	700	500	135	82	55	40	20	15		
13	Maryland	80,516	63,818	49,004	43,450	24,031	17,220	12,499	7,945	3,227	2,162	1,611	1,190	758	300	20	
14	Virginia	220,582	187,605	140,570	101,452	60,000	30,000	26,559	23,118	16,390	9,345	3,000	2,000	950	405	150	50
15	North Carolina	91,000	69,600	33,554	19,800	11,000	6,000	3,000	900	415	300	210	150	20			
16	South Carolina	97,000	75,178	57,334	39,000	30,000	20,000	12,000	4,100	2,444	1,500	200	30				
17	Georgia	20,831	10,625	3,578	1,000												
18	Kentucky	7,200	2,500														
19	Tennessee	1,500	200														

Series No.	Colony	1620	1610
	WHITE AND NEGRO		
5	Plymouth	102	
14	Virginia	[4]2,200	350

[1] For 1660–1780, Maine Counties included with Massachusetts.
[2] Plymouth became a part of the Province of Massachusetts in 1691.
[3] Includes some Indians.
[4] Includes 20 Negroes.

SOURCE - Historical Statistics of the United States.

Table 7: COMPARISON OF JUDGMENT PATTERNS BETWEEN TWO MAJOR CRIME CATEGORIES AND COUNTERFEITING ACTS IN N.Y. COLONY

Crime	#Accused	#Convict	%Convict /Accused	#Acquit	%Acquit /Accused
Violence (Personal)	1140 *21.5	546 *21.5	47.8	78 *9.8	6.8
Thefts	727 13.7	389 15.3	53.5	154 19.3	21.1
Counterfg	99 1.9	37 1.5	37.4	14 1.8	14.1
paper	61 1.2	21 .8	34.4	7 .9	11.5
coin	38 .7	16 .6	42.1	7 .9	18.4

SOURCES - Trial court records of the N.Y. Quarter Sessions (1691-1775) and the Supreme Court of Judicature (1691-1739, 1750-1776).
N.Y. Colonial Manuscripts.
Greenberg, D: Crime and Law Enforcement in the Colony of New York.

NOTE - The Violence (Personal) crime category includes only acts of personal violence not resulting in death.

* % of all Accusations, Convictions, or Acquittals. The court records of N.Y. colony show a total of

5,297 accusations, 2,538 convictions, 797 acquittals

for crimes ranging from acts of personal violence to the maintaining of a "disorderly" inn. (Thus, for example, the 1.9 figure in the #Accused column specifies that of the 5,297 individuals accused of criminal acts in colonial N.Y., 1.9% of the accusations were for counterfeiting.)

the same day, Shore, who did not confess, was tried summarily, convicted, and ordered to receive thirty lashes (NY Col. Mss., 29: 96).

Though this is the only information provided, it does tell us that even at this early date, (1) it was possible for coins from one colony to be imported, and used illegally, in another colony, (2) defendants were indicted, convicted, and sentenced all at one time, and (3) fines and bodily beatings were punishments for misdemeanors.

Apparently, these two cases were not isolated occurrences, but they may have prompted ensuing legislation. A warrant was issued in 1684 requiring the arrest and punishment of passers of fake coins. It stated that as several persons had given very credible information that false Boston, Spanish and other kinds of money were circulating in New York, any person found putting off such coins should immediately be brought before one of the town officials to explain his behavior.

Ten years after the apprehension of Burrell and Shore, in a case again reported in the New York Colonial Manuscript Collection (Vol. 37, p. 137), another coining and passing case appears. John Rush is accused of carrying his fakes on a ship traveling from New York to Jamaica. Coming across, here again, is the issue of mobility. Not only was the man found transporting his illegal reproductions out of the colony, but, according to the accused, he

did not make the fakes himself, but got them from someone in Pennsylvania, the colony in which his family lived. So, in addition to being caught on board a ship, the alleged perpetrator seemingly operated between at least two colonies. Apparently eager to use this intercolonial mobility factor to extricate itself from having to deal with this offender, the council of New York colony shipped Rush, under guard, and with his counterfeits, to Pennsylvania for prosecution.

In 1698 a case appears in the Manuscript Minutes of the New York City Court of Quarter Sessions (1694-1731, 32: 42-43) which demonstrates that even individuals of good standing and reputation in the community partook of counterfeiting frauds, and were punished for them.

Thirty-five year old Gabriel Ludlow was a successful, married, merchant, shipbuilder, and church vestryman who paid a man of much lesser status to pass along seventy-three false dollars which had been passed on to him. Ludlow confessed to the misdemeanor and was order to provide restitution to his victims, pay a fine (of £3) to be used by Trinity Church (where he was a vestryman), give recognizance for his good behavior for three months, and pay the costs of the court of Quarter Sessions.

In 1699 Ludlow, despite his behavior, became clerk of the New York Assembly. Explaining, in a letter to the Lords of Trade, the securing of this prized post by an immoral merchant, the then

Governor of New York maintained, in essence, that all Englishmen capable of holding the job were corrupt, and that whatever honest Dutchmen existed were unlearned:

> I am sorry to say it, but 'tis an undoubted truth, the English here are soe profligate that I can not find a man fitt to be trusted that's capable of businesse...I was obliged to employ one Ludlow a merchant to be Clerk of the Assembly ...one that was lately convict of cliping and coining in this towne. I think proper to acquaint your Lordships of this circumstance, that you may see how impossible a thing it is to make a right choyce of men in this place.....Those that are honest of the Dutch, being formerly kept out of imployment and businesse are very ignorant, and can neither speak nor write proper English (O'Callaghan, 1853-1887, IV: 520).

Two years after Ludlow's confession a grand jury indicted Susannah Elliot for clipping and uttering (see p. 198). Information on this case is limited, but it nevertheless illustrates two points: first, women, as well as men were indicted for counterfeiting offenses in colonial New York, and, second, the concept of 'appealing' (really requesting that a case be removed to another court or court session)) was already in place.

According to the records of the court of Quarter Sessions (Ms. Mins. NYCQS, 1694-1732: 60-61), where misdemeanors were commmonly tried, Elliot pleaded not guilty, and brought a writ of certiorari for removing her indictment and record to the Supreme Court of Judicature. This may have been a wise motion, for the Supreme Court minutes indicate only that Elliot's record was to be brought up from Quarter Sessions (Ms. Mins. SCJ, 1701-1704, p. 7). No mention is made of the disposal of the case. Perhaps the case

was simply dropped.

In the same year (1701) that Elliot's case was removed to the Supreme Court of Judicature, a mariner, Richard Thomas, was indicted by the grand jury, in Quarter Sessions, for uttering counterfeit dollar coins (the same offense Elliot was accused of). No motion was made for the removal of his case to the Supreme Court of Judicature. He was tried in Quarter Sessions, the day following his indictment, and was found not guilty (Ms. Mins. NYCQS, 1694-1732: 63). As Illustration 6 shows, and as is common in the court minutes of several cases, no further details are provided. We do not know whether any witnesses appeared for the Crown, or for Thomas.

In 1702 William Fowler was charged in Quarter Sessions, for passing clipped coins, and we do know that character witnesses appeared. Unlike in Thomas' case, there was no formal indictment or trial. In what appears to have been a preliminary examination, the justices must have been satisfied with the explanation, provided by Fowler, for his behavior. According to the record (Ms. Mins. NYCQS, 1694-1732: 68), Fowler claimed that the clipped coins he was said to have uttered and passed were mixed in with a large amount of money he had acquired in Rhode Island (again, the mobility theme), that he did not know the clipped coins were mixed in with the money he had accepted until he had used them in payment, and that he did not know who had clipped the coins. It's

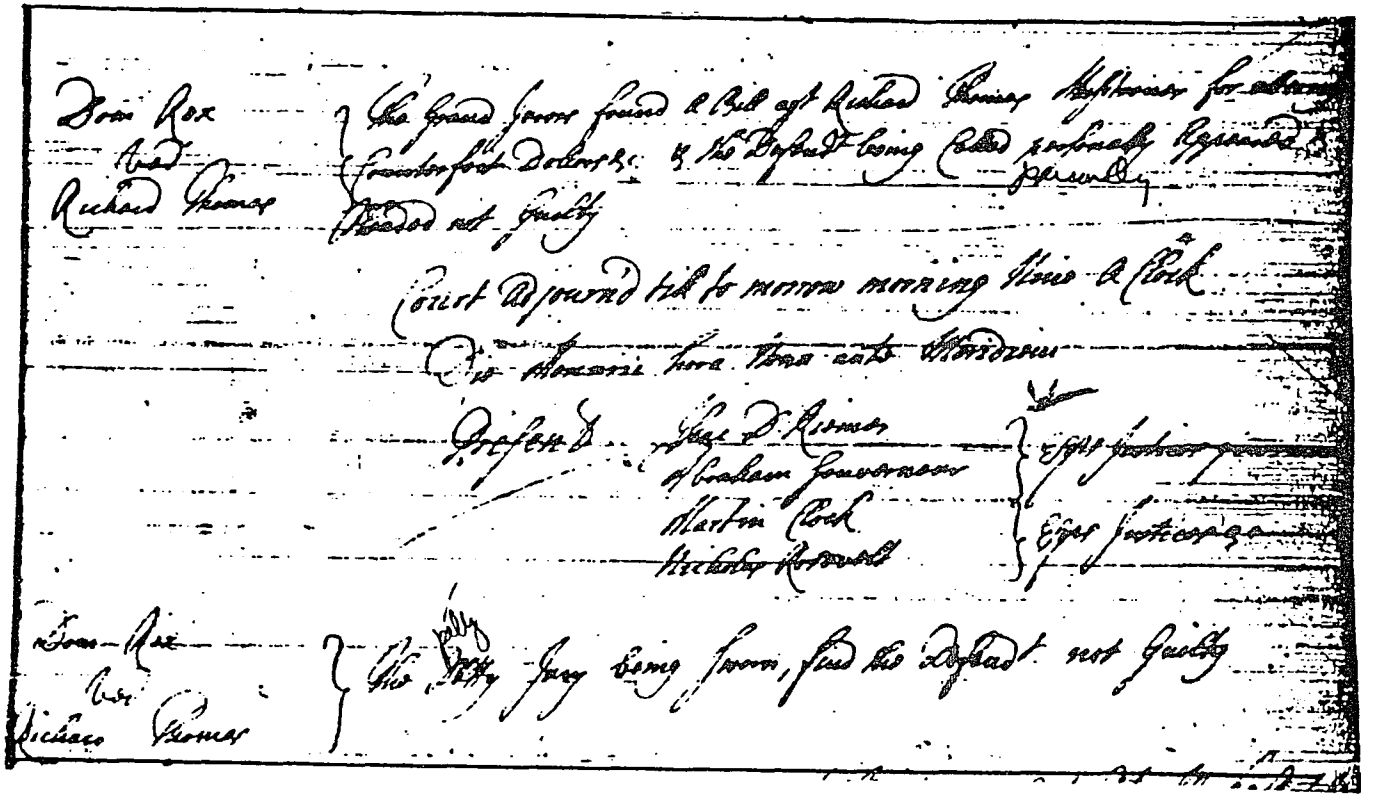


Illustration 6: Case Entry in New York Court of Quarter Sessions.

likely he was readily believed because present in the court were "...several persons of Note Vouching for the honesty of the said William Fowler..." The court ordered only that the 131 coins in question be melted down and given to the defendant, who was to pay court fees and be discharged.

Prosperous silversmith Garrett Onclebagg didn't fare as well financially. Indicted by the grand jury, less than a year later, for coining and uttering "false Money of base & mixt metalls," Onclebagg requested that his case be removed to the next court session. His request was granted after he and his sureties provided £300 pounds in bail. At the next court session, held three months later, Onclebagg pleaded not guilty, but to avoid trial, submitted himself to a fine and prayed the mercy of the court. He was fined £20 (which was then a large fine), ordered to give surety of £100 for good behavior for one year, and to pay court fees (Ms. Mins. NYCQS, 1694-1732: 70, 71, 74, 77).

The day following Onclebagg's indictment, Sophia Thomas was indicted in Quarter Sessions for possessing clipped coins. There was no trial. She "demurred" to the "insufficiency of the indictment," the attorney general joined in the demurrer, the court heard the argument, and it was ordered that the indictment be "quashed" as insufficient.

After Fowler's, Onclebagg's, and Sophia Thomas' cases (and probably as a reaction to many reports of circulating

counterfeits, and earlier case law), a one-year statute was passed in New York on November 27, 1702 (see Chapter 4) establishing the counterfeiting and clipping of currency as a criminal act punishable by imprisonment "...for the space of one whole Year and a Day" and the forfeiture of all "Goods and Chattels." This act was revived in 1708, this time to be in effect for ten years.

The intent of lawmakers was to deter counterfeiting acts that had come to be viewed as an increasing problem for the new colony. We have no way of knowing whether the 1702 statute had a deterrent effect, but we do know that court records show no cases of any defendant being imprisoned, or forfeiting his or her 'goods and chattels,' during the eleven year period covered by this statute. Two persons were indicted and discharged in the periods covered by the original enactment and its revival; one for lack of sufficient evidence, the other because the case had been boundover from an earlier court session and no one showed up to prosecute.

On the subjects of imprisonment and forfeiture, it is necessary to note here that imprisonment generally was not used as a punishment in colonial New York. Jails were used primarily to hold suspects awaiting trial. The condition of the jails was deplorable and suspects dreaded incarceration (Scott, 1953). As for forfeiture, there is no case, on the entire counterfeiting record, of a convicted defendant being required to relinquish anything other than his counterfeits. According to Goebel and

Naughton (1970: 716), "...most of the felons convicted were so meanly circumstanced that there was nothing to forfeit." Forfeiture posed a threat mainly to those who possessed property, and such persons, though partaking of certain crimes, were seldom convicted. Also, even if they were, "(N)o jury of freeholders on whom the burden of poor relief rested was likely to find chattels and thus cast upon the county the support of a convict's wife and family (1970: 717)."

After the indictment and discharge of Sophia Thomas, and between 1703 and 1705, an innkeeper, a baker, and a woman of unspecified occupation were indicted on coining charges. None of them were convicted.

In 1706 two coiners were indicted and convicted in the Supreme Court of Judicature. This was the first time that the Supreme Court was used as the court of original jurisdiction in a counterfeiting case, the first time that mention was made in the court minutes of witnesses appearing for the Crown, and the first time that various and extended corporal punishments were ordered.

Perhaps because so many (9) witnesses appeared for the Crown, and/or because the government had become increasingly frustrated by the increase in coining offenses, Bartholomew Vank and Thomas Roberts were sentenced to immediate and harsh public punishments, which, unlike imprisonment or forfeiture, were clearly designed for example and deterrence.

According to the Manuscript Minutes of the Supreme Court of Judicature (1705-1709, pps. 54, 57, 68, 69, 72), Vank and Roberts were to be publicly beaten several times in various places around New York City, and then, a week later were to be pilloried. Instructions were specific. It was ordered, one day after their convictions, that four days hence they were both to be:

> ...whypt att (sic) the Carts Tail in the Broadway in sight of the Town Hall, at the Well in the Broad way, att the End of Bever Street, att the End of Pearl Street, att the Cage, att the most publick (sic) part of the markett (sic) at Burghers path, att the Corner of Wall Street, and att the City Hall, three Lashes each at each place." This done, a week later they were, "...both to be sett (sic) on and in the Pillory for one hour between the hours of eleven & one with an inscription in capitall (sic) letters fixt (sic) over each of their heads on the Pillory with these words for Counterfeiting Dollars...

Though such corporal, and public punishment, is now obsolete in America, there are those who believe it served a useful function in terms of specific and general deterrence,[1] and that some such form of social censure should be used today. Law professor Harry First (1990: 351) says, "In many respects the colonial use of stocks and equivalent punishment in other societies served a useful goal in providing swift social disapproval as a deterrent. It is obvious that some form of this disapproval is required under modern conditions."

Distinguished professor and historian Dr. Kenneth Scott, the foremost expert on counterfeiting in colonial America, believes that, "Public beatings and hangings worked, and should be considered again by the criminal justice system. Recidivism was

[1]Quite likely it was used for counterfeiters, homosexuals, perjurers, and others, whose faces, authorities believed, should become known to the populace.

low in New York because the public saw that offenders might well be punished to the full extent of the law. Those intent on counterfeiting went off to other colonies where counterfeiting laws and/or their enforcement were much more lax (1991, Feb. 13)."

Paper Counterfeiting Begins

On November 1, 1709, in a bill of credit issuance enactment, the counterfeiting of these bills was declared a felony without benefit of clergy (see Chapter 4). New York lawmakers, aware of counterfeiting frauds Massachusetts was facing with its paper currency emissions, hoped to avert similar problems through legislative pronouncements and warnings. In addition to having to deal with coiners, the legislators feared that the colony might now have to deal with with paper counterfeiters as well -- and their fears came true.

In July, 1713 two men who had come to New York from neighboring colonies (again, the mobility theme), Joseph Berry and James Mark, were arrested and jailed for counterfeiting New York bills of credit. On September 4, 1713, both were arraigned in the Supreme Court of Judicature (the court of original jurisdiction for capital offenses). Mark confessed to a counterfeiting indictment. Berry pleaded not guilty to the same indictment and was tried and convicted by a jury which took note of the fact that he had no land, goods, or chattels to forfeit. On September 5, 1713 both men were sentenced to be hanged the following week (Ms.

Mins. SCJ, 1710-1714, pps. 466, 472, 475-477).

The hangings never took place. On October 13, 1713 a "Queen's pardon" was issued (O'Callaghan, 1929: 16). According to Scott (1953:16), quoting a Boston News-Letter of September 21, 1713, on the day before the execution was to have taken place, "most of the Gentlewomen" of New York "...waited upon his Excellency our Governour, adressing him earnestly with Prayers and Tears for the Life of Berry & Mark...whereupon his Excellency was pleased to pardon them."

Discussing the role of pardons in colonial New York, and the fact that public officials were easily accessible to men and women in trouble with the law, and to their supporters, Greenberg (1976: 128), says, "Nor were prisoners alone in their supplications to government officials (for pardons). Friends and relatives often joined in as well," attesting to the good character of the convicted, and such supplications brought desired results.[1] "Pardons were frequently granted to capitally convicted defendants," says Greenberg. "Of all those sentenced to death (between 1691 and 1776), 51.7% were pardoned after their trial by one or another agency of government (1976: 130)."

According to the court records amassed for this study, only 40% of those sentenced to death (6 out of 15 defendants) for counterfeiting offenses were pardoned. The lower rate of pardons to convictions (or the higher rate of executions to convictions)

[1]Men were in short supply in the colony, and needed by the military, as well as for family support. Authorities were not eager to hang convicts who were not hardened criminals.

for counterfeiting, than for other capital crimes, seems to indicate that the judicial system of colonial New York came to regard counterfeiting a more serious threat to the newly developing economy than many other capital crimes.[1]

Bridenbaugh (1971b: 110-111), in keeping with this position, and discussing the "alarming increase in robbery and violent crimes" in the American colonies, and the colorful nature of certain American outlaws, stresses that, "Less 'romantick' than this fellow who 'made a great noise in every American colony,' yet far greater enemies to society, were the silent and unobtrusive men and women who counterfeited money..."

Providing some execution statistics they compiled from colonial New York court records, Goebel and Naughton (1970: 702f) say that:

> "Out of 446 cases in the Supreme Court of Judicature where punishments were meted out between 1693 and 1776 (with certain years completely missing)...(e)ighty-seven defendants were sentenced to be hanged after being convicted for the offenses of murder, counterfeiting, burglary, highway robbery, horse stealing, sacrilege in stealing, felony, pickpocketing and grand larceny. Among these 87 cases were some of slaves hanged for attempted rape and attempted murder. We have also included in this total 19 cases of slaves hanged in connection with the 1741 slave conspiracy..."

Given these statistics, and subtracting the 19 hangings for the single slave conspiracy, we're looking at 68 death sentences divided between 9 specified felonies, or an average of 7.5 death sentences per felony. The fact that there were 15 death sentences for counterfeiting offenses alone, again points to the high place

[1] It must be kept in mind that the numbers here may be too small to generalize.

of counterfeiting on the judicial system's priority list of 'most seriously perceived' crimes (especially since there exist many more cases on record of violent crimes and thefts than of counterfeiting offenses - see Table 8).

Goebel and Naughton's findings indicate that, looking at averages, twice as many executions were ordered for counterfeiting than for any other felony. These statistics are consistent with this current study's findings that fewer pardons were issued for counterfeiting frauds than for other capital crimes.

On a similar track, but talking about executions in eighteenth century England, Mackesy (1990: 9) provides information regarding the exceptional harshness shown forgers (of official documents, which may or may not include state currency). "One of the anomalies of the gradual relaxation of capital punishment during the third quarter of the eighteenth century," says Mackesy, "was the continuing high ratio of executions to convictions for forgery... Even when forgery was finally declared non-capital in 1844, the move came not from a reforming spirit but because financial interests were finding that the extreme penalty made juries reluctant to convict."

Mackesy explains that in eighteenth century England the judicial system was severe and unyielding on forgery as it was perceived to be a particularly dangerous crime in a commercial society. This current study finds that a similar claim can be made

about counterfeiting in commercializing, colonial New York.

In 1720, seven years after the pardoning of Berry and Mark, the first New York paper counterfeiters on record, Abner Hunt was arrested for counterfeiting and passing a £6 New York bill of credit. Supreme Court of Judicature records are not available for this period, but, according to the March 17, 1720 edition of a Philadelphia newspaper, on March 11th Hunt was tried in the Supreme Court and acquitted by the jury of the charge of felony in counterfeiting the bill, but was found guilty of a misdemeanor in passing it, knowing it to be counterfeit (Scott, 1953: 17).

Hunt's case underscores practices such as the 'partial verdict,' (what eighteenth century English jurist Sir William Blacstone termed) 'pious perjury' (a jury returning a verdict in variance with the evidence or a relevant statute), and what the Carey Report (1979: 7-8) calls jury "nullification:"

> "A variety of devices were...utilized to mitigate the harshness of the laws...important...was nullification; colonial juries apparently acquitted large numbers of defendants, or found them guilty of less serious offenses, in order to avoid being required to pronounce the death penalty...The threat of the gallows, which was intended to discourage crime, in reality had the opposite effect: by decreasing the risk that the offender would receive any punishment all, it undermined the deterrent power of the criminal law."

Based on the little information available, it appears as though jury nullification is what occurred at the Hunt trial. Apparently the jury chose to ignore any evidence of counterfeiting, which was a capital offense, and focus only on the

charge of passing, which had not yet become a capital offense.

Hunt may have been the only paper counterfeiter brought to trial in 1720 (as mentioned, court records are unavailable for that year), but he was not the only person partaking of paper counterfeiting frauds. The Manuscript Minutes of the New York Court of Quarter Sessions for November 2, 1720 attest to the fact that a large number of fraudulent bills were being brought into court and burned (see Chapter 4, Illustration 3).

Responding perhaps to the Hunt case, and to evidence of increased paper counterfeiting, on November 19, 1720 the New York legislature passed a currency emission statute that expanded on the counterfeiting provisions and warnings of the November 1, 1709 enactment (see Chapter 5, Table 5).

Now, not only was counterfeiting pronounced a capital offense, but so too were the (deliberate) passing (which is what Hunt was convicted of) and altering of bills of credit. Also, such offenses were to be punishable by "death." The 1709 statute had specified that bill of credit counterfeiting be punished as a felony, which allowed for the death penalty, but left open the alternate possibility of forfeiture of property, goods, and chattels. The new, expanded counterfeiting provisions of the 1720 enactment were more precise, and would be repeated in all future currency emission statutes of colonial New York; still, all classes of people would engage in the crime.

In 1723 a case of scandalous proportion occurred. Thomas Lynstead, a learned, well-respected Long Island gentleman, who had come over from England, was discovered to be the counterfeiter of thousands of bogus 20 shilling bills of credit. Though engaged to be married, he was living in a house with a young woman, who, upon searching his belongings, found and took several of his hidden bills. Not knowing they were counterfeits, the young woman tried to pass them off in New York City. The bills were unsigned, and she was quickly discovered. Upon hearing that his bills were so discovered, Lynstead hung himself (Scott: 1953).

Lynstead's case is interesting in that he chose to commit suicide rather than stand trial. Several questions are left unanswered. Did he believe, that in keeping with the law, he would be executed anyway? Would he have been, or were the gallows reserved for those of low social status? Was Lynstead excessively embarrassed because it was discovered that he was living, out-of-wedlock, with a young woman (who may or may not have been the woman he was engaged to marry)? Did the thought of being treated like a common criminal make this man of stature feel that life was no longer tolerable?

Clearly, we can not answer these questions, but the Lynstead case (like the Ludlow case of 1698) does inform us that counterfeiting, whether of coin or paper currency, was not the exclusive province of the lower classes. Additionally, it again

highlights the relationship between mobility and counterfeiting, as those involved in the case concluded that Lynstead's plates and bills were made in England and brought over to America.

Despite harsh legislation, the Manuscript Minutes of the Court of Quarter Sessions continue to show large numbers of counterfeit bills being brought into court by individuals who had innocently taken them in payment from passers who escaped apprehension.

In addition to paper counterfeiting, coining (which was not a capital offense) was still going on. (The law against coining offenses had expired in 1718, and new legislation would not be enacted until 1745). At the end of 1723, the same year as the Lynstead affair, two men, Benjamin Wentwood and Thomas Steel, were jailed for passing fake dollars. Each was required to give recognizance of £25 and to appear at the next Sessions court. No record exists as to the disposal of these cases (Scott, 1953).

According to the minutes of the Supreme Court of Judicature, Isaac Mense was tried on March 15, 1725 for altering and passing a New York bill of credit. This is the first recorded case of anyone being tried for 'altering,' though the act was anticipated in the 1720 currency emission statute which established it, along with counterfeiting and passing, as a felony to be punished by "death."

Assuming his guilt, perhaps Mense believed that by altering, rather than counterfeiting, he was engaging not only in an easier,

but also in a new and milder currency fraud, one that would be less likely to get him convicted, if caught. Or maybe he knew that he could round up a lot of character witnesses, whose testimony would lead a jury to acquit. Or, quite likely, he never thought about getting caught and prosecuted. In any event, he was tried and found not guilty in a courtroom where eighteen witnesses appeared for the defendant and eleven for the Crown, one of whom claimed to be the recipient of an altered bill given to her by Mense (Ms. Mins. SCJ, 1723-1727, p. 134).

Having eighteen character witnesses probably helped Mense. However, the disposition of his case may be an example of pious perjury and jury nullification discussed above. Despite ample evidence for a conviction, the jury might have been reluctant to condemn Mense to the gallows, and so declared him not guilty.

The same year, 1725, that Mense was acquitted of altering and passing, John Jones was tried and found guilty of knowingly passing an altered bill. Fortunately for him, his sentencing was delayed and he was able to produce a King's pardon six months after his trial (Ms. Mins. SCJ, 1723-1727, pps. 143, 146, 170). Here, as in Mense's trial, the evidence consisted of a Crown witness claiming a false bill had been passed to him. Yet Jones was convicted and Mense was not. The only thing that appears to have been different in both cases was the fact that Jones had no character witnesses, and the Crown had three.

As mentioned earlier, a trial court judge, by delaying sentencing, could be a convicted defendant's savior, and this was the case here. Rather than facing immediate execution, Jones had time to come up with a pardon. So, what we see here, and what continued to happen in several cases, is that indicted counterfeiters, despite convicting evidence, escaped execution either through jury nullification or pardons.

In 1727 David Willson and David Wallace were indicted and tried for counterfeiting and passing New York bills of credit, and for passing New Jersey bills of credit in New York. Regardless of the facts that they had been reported to be jewel and horse thieves, as well as counterfeiters (New-York Gazette, April 17, 1727, p. 2), and that there appeared seven witnesses for the crown (and none for the defendants) at their October 12th trial, both men were acquitted of counterfeiting and passing the New York bills. They were found guilty only of passing the New Jersey bills (Ms. Mins. SCJ, 1727-1732, pps. 9-11).

Again it appears that a jury was reluctant to condemn counterfeiters to the death penalty. Passing the bills of another colony (i.e., New Jersey) in New York was considered a "cheat," not a felony, and though punishable, it would not become a capital offense until 1766.

It should be noted here that the sentences received by Willson and Wallace were harsher than those received by Vank and

Roberts in 1706 (see p. 269), who were charged with cheats for counterfeiting coin. In addition to exceptionally severe and prolonged public corporal punishment in several locations, Willson and Wallace also received three and six months jail sentences respectively (though imprisonment was an uncommon punishment in colonial New York). In addition to the fact that, statute-wise, paper counterfeiting was considered a more serious offense than coining in the early part of the eighteenth century, it seems that the judicial system was becoming intent on strong exemplary sentences.

Sometimes, the judicial system was indifferent to whether a statute supported its decisions. In 1730 an execution was ordered of a defendant found guilty of making and passing false coins and possessing coin-making equipment. This sentence is interesting in that at the time it was pronounced no law was in effect regarding coining. John Conner was tried and convicted in the Supreme Court of Judicature and sentenced to "...be hanged by the neck till he be Dead." There were no witnesses for Conner and eight for the Crown, two of whom claimed Conner had passed his false coins to them (Ms. Mins. SCJ, 1727-1732, pps. 244, 249-250).

According to the court record, the jury noted that Conner had no goods or chattels, leaving one to wonder whether forfeiture, in keeping with common law, would have sufficed had the defendant had property. Also to be wondered about is why a man, Thomas Copley,

convicted four years later of coin uttering (which had become a growing problem in the colony) received the much more lenient sentence of an hour in the pillory and thirty lashes at the public whipping post. Copley, like Conner had no witnesses in his defense (the Crown had three), and it is unlikely that he had any goods or chattels to forfeit. Or, again, why, in 1737, did an itinerant professional thief and coiner, Patrick Butler (NYCQS, 1722-1743: 343-344), with no witnesses appearing on his behalf, and many appearing for the Crown, receive only corporal punishment upon conviction for behavior that got Conner a death sentence? In the absence of any explanatory data, one can conclude only that then, just as now, there was great sentencing disparity.

In 1735 we find the indictment of a working couple, Joseph and Catherine Johnson, he a bookbinder charged with counterfeiting bills of credit, she an innkeeper (and mother) accused of passing the bills. Joseph managed to hide out and escape prosecution. Catherine, was tried (for a misdemeanor), convicted, and sentenced to receive twenty-one lashes on her bare back (Ms. Mins. SCJ, 1732-1739, pps. 158, 162, 172-173, 175). To be questioned here is why Catherine was not indicted for a felony. The answer may lie in the fact that the grand jury that indicted her was sympathetic to the fact that her husband had escaped leaving her with a young small child. Yet, according to statute law, the act of 'passing,' for which she was indicted, was clearly a felony, not a misdemeanor. It is not as

though the jury deliberately downcharged, or ignored a capital offense, and focused only on an accompanying misdemeanor charge, as was the case with Abner Hunt (see p. 274). Could it be that in addition to sentencing disparity in colonial New York, there also existed judicial indifference to statute law in select instances?

In 1739 we find a woman, Margaret Haynnie, receiving a sentence for coin uttering (still a misdemeanor) less severe than that given coiner John Conner ("to be hanged by the neck till he be Dead"), but more severe than that given to bill of credit passer, Catherine Johnson. Haynnie, like Johnson was sentenced to receive twenty-one lashes on her bare back; but, unlike Johnson, Haynnie was also sentenced to three months in jail, where she was to be kept at "hard labor" (Ms. Mins. NYCQS, 1722-1743: 361). Not only does this case again demonstrate the existence of sentencing disparity, but it is also the only case on record of a female counterfeiter receiving a jail sentence.

Perhaps because the counterfeiting of out-of-colony bills within New York was yet to be classified as a felony (but would be in 1766), two more cases appear, in 1739, of counterfeiters operating inside New York with out-of-colony bills. Two New England men (again, the mobility theme), Samuel Flood and Joseph Steel, were apprehended, in New York, for counterfeiting and passing Rhode Island bills of credit in New York. One confessed and received corporal punishment. The other was discharged for lack of sufficient

evidence (NYCQS, 1722-1743: 362-363). Interesting here is the fact that the men did not choose to operate exclusively in Rhode Island with bogus New York bills of credit. Might this have something to do with the fact that operating outside of New York, but with New York bills, had been made a felony in 1737, and Flood and Steel did not want to be subject to this law? And/or might it be explained by the fact that Rhode Islanders were less trusting of out-of-colony bills than were New Yorkers; and heterogeneous, commercial New York seemed a better outlet for fraudulent bills than did Rhode Island?

Again underscoring the mobility theme in counterfeiting, is the case of mariner Garrit van Voorhees, who was arrested and jailed in 1739 for importing and passing bogus forty shilling New York bills that he had had struck in Ireland and brought over to New York (New-York Gazette, June 25, 1739, p. 3).

July 3, 1739 Minutes of the Governor and Council of New York (Vol. 19: 21-24) state that Voorhees' bills, as well as many other counterfeited and altered bills, were circulating "...in this Province which Mischief if not timely prevented may tend to the great Damage (if not the utter ruin) of many of his Matiés people within the same," and go on to provide several examples of bills altered from smaller to larger denominations, and to order that a proclamation be issued offering a reward to any:

> ...persons who shall discover the author or authors of the aforesd. forged Ten Shillings & five shillings bill of credit, or of the Counterfeit or forged bills of the aforementioned 40s bill of Credit...or of the accomplice or accomplices...to be paid on the

conviction of such author or authors..., with a promise likewise of pardon to any such accomplice or accomplices who shall make discovery of the author or authors of the sd. forged altered or counterfeited bills...

This proclamation was published in the July 9, 1739 edition of The New-York Gazette, and, at the end of the proclamation, mention was made of the fact that:

...Garrit van Vooris, who was lately committed to the Gaol of this City, for uttering several of the before mentioned Counterfeit Forty Shillings Bills, and caused a great Number of the same to be Printed in Ireland, and imported into this City, on Wednesay Evening last broke out of Prison, and has made his escape...

Unable to flee prison was bill of credit counterfeiter John Stevens, who, according to the December 26, 1743 (p. 2) edition of the New-York Weekly Post-Boy, attempted to escape shortly after being jailed on suspicion of counterfeiting, but "...the Watch happening to discover him before he had quitted his aireal Posture, very kindly received him ...and civilly (sic) conducted him back to his Lodgings again."

Though the Supreme Court of Judicature records are unavailable for this period, the New-York Weekly Post-Boy of August 13, 1744 (p.2) reported that Stevens was tried in the Supreme Court for counterfeiting and uttering and "...the Jury, after a short Stay, brought in the Prisoner Guilty; and ...Sentence of Death was passed on him, and he is to be executed on Friday..."

Stevens' case is the first reported execution of a paper counterfeiter in New York. Judging by the July 17, 1744 Minutes of the Governor and Council of New York (Vol. 19: 265-266) the

government had been eager to secure a conviction against Stevens:

> ...it being of the highest consequence to this Colony that the said John Stevens should be prosecuted with the utmost Rigour of the law to deter others from the like pernicious practices for the future...(h)is Excellency and...his Majesty's Council...doth hereby declare and assure all persons whatsoever who shall Come to give evidence agt the said John Stevens at his Tryal at the next Supreme Court shall be safe in their persons and freed from any Arrest, Imprisonment or punishment whatsover for their being concerned with him...

The information in these minutes was ordered to be published; and apparently several persons appeared to provide evidence against Stevens, as the jury not only convicted him, but did so quickly. Subsequently Stevens, unsuccessfully, petitioned the governor for a pardon (Ms. Mins. Council, 19: 277). Reporting on his quick execution, and urging other colonies to execute counterfeiters, the New-York Weekly Post-Boy said Stevens:

> ...died penitent; but his Crime was too well known for him to have pretended to extenuate it by any Speech from the Gallows: and as it was thought he expected a Reprieve, it may reasonably be suppos'd he refrain'ed making one till too late. If some of our neighbouring Governments would but act with equal Justice, it might be presumed, these Pests of Society would be something scarcer.

In the year following Stevens' execution several paper and coin counterfeiters were arrested and imprisoned. All but two coiners escaped jail. On November 25, 1745 the New-York Weekly Post-Boy (p. 2) reported a widespread circulation of counterfeit coins. Prompted by case law, and what was perceived to be an alarming increase in coining, a statute was enacted on November 29, 1745 declaring the counterfeiting and/or passing of gold or silver coin currency a felony, punishable by death without benefit of clergy. Now, both

coin counterfeiting, and certain paper counterfeiting acts, were considered capital offenses.

Despite a great deal of responsive legislation, the counterfeiting and/or passing of out-of-colony bills of credit in New York, though occurring (see cases of Willson, Wallace, Flood, and Steel above) with increasing frequency, was not yet a capital offense, and would not become one for over two decades. In 1747 four New England men, suspected of being part of an intercolonial counterfeiting gang, were captured and jailed in New York for counterfeiting the bills of several colonies. The Supreme Court records for this period are unavailable, but it appears as though their cases may have been boundover to courts in other colonies.

According to the July 28, 1747 Minutes of the Governor and Council of New York (Vol. 21: 263), intercolonial cooperation in the suppression of counterfeiting was again suggested (as it had been in the Stevens case). It was ordered that the names of these four jailed men, and others associated with them, be sent to the governors of the provinces in which they resided, so that they might be quickly apprehended and brought to justice in their own colonies.

Large numbers of bogus New Jersey bills were soon discovered to be circulating in New York, and the governor of New York, addressed the general assembly of New Jersey, and underscored the need for intercolonial cooperation in the handling of counterfeiting, which he believed to have grown into a form of organized crime:

(T)here is a Knot, or Combination of villainous Persons," said Governor Belcher, "that are making a Trade of forging the Bills of this Province; And this Matter well deserves your speedy Care and strict Enquiry, as it strikes at the very Vitals of your Currency, and so must nearly affect not only your Commerce, but your other Estates also (The New York Gazette, revived in the Weekly Post Boy, December 6, 1747, p. 1).

In 1751 the second suicide of a paper counterfeiter took place. Jonathan Woodman was imprisoned and indicted for counterfeiting New York and New Hampshire bills, and for passing the New York bills (Ms. Mins. SCJ, 175--1754, pps. 53, 54, 66). However, his case never came to trial. According to the September 9, 1751 edition of the New York Gazette, revived in the Weekly Post Boy, which seemed quite content with counterfeiting as a capital crime, Woodman "...was found hanging dead in his Garters at the Grate of his Prison," and it was quite appropriate that he took his own life as "..all such Pests of Society ought to be look'd on as scarce worthy of the Labour of a Hangman."

Other "Pests of Society" continued to persist in paper and coin counterfeiting, but it wasn't until 1756 that we find another recorded conviction and execution, this time of one of the true counterfeiting villains of New York, and several other colonies -- Owen Sullivan. Sullivan, an infamous colonial counterfeiter, was captured due to the efforts of many searchers, who tracked him down not only out of a sense of public duty, but also in order to receive the several rewards offered for his capture.

On April 24, 1756 a jury found Sullivan guilty (five witnesses

appeared for the Crown, none for the defendant), and on April 29th he was sentenced to be hanged on May 7th (Ms. Mins. SCJ, 1754-1757, pps. 253, 255, 261). Sullivan's speech from the gallows, and the effect it had on the enactment of the anti-counterfeiting statute of July 9, 1756 were covered in chapter V. However, it is interesting to note here that colonial executions could be delayed, not just as a result of pardons, but due to more basic circumstances. Sullivan's hanging did not take place on Friday, May 7th, as scheduled, but three days later, first for want of a hangman, and second, because the gallows were cut down (presumably by friends or sympathizers).

Illustrations 7, 8, and 5 (in chapter V), show how the New-York Gazette, or Weekly Post Boy, one of the major newspapers of the day, reported on the Sullivan case in its May 3rd, May 10th, and May 17th editions. (Note the uses of aliases, which was commonplace among established counterfeiters, the absence of headlines or bylines, and the manner in which one article or announcement runs into the next.)

According to the New-York Gazette, or Weekly Post Boy of July 16, 1761 (p. 3), in 1761 a silversmith from upstate New York, Charles Hamilton, hanged himself while in a Poughkeepsie jail awaiting trial for coining. Perhaps Hamilton felt it would be useless to go to trial as he knew there would be several witnesses to provide evidence for the Crown, and coining had become a capital offense in 1745.

A PROCLAMATION.

WHEREAS the Divine Displeasure hath, in a very remarkable Manner, been manifested, by the late terrible and extensive Earthquake, which was also very severe in this and the neighbouring Colonies: From the dreadful Effects whereof, so fatal to several Nations, this Province, and all his Majesty's Dominions, have been most graciously preserved. And whereas our Most Gracious Sovereign is still obliged to have Recourse to Arms, for recovering and securing his just Rights in America, from the Encroachments of the French and their Savage Allies: on the Success whereof, our Liberties and Properties, but above all, the Security of our Holy Protestant Religion do, under God, depend: That therefore our Iniquities may not deprive us of the Divine Protection, and draw down more heavy Judgements upon us, it behoves us deeply to humble ourselves before Almighty God, by a sincere Repentance and Reformation, most earnestly to deprecate the Calamities we have Reason to fear; to intreat the Removal of those we suffer, and to implore the Divine Protection and Blessing on his Majesty's sacred Person, illustrious Family, his Kingdoms and Colonies, his Fleets and Armies. For the more solemn Performance of which necessary Duty, I have thought fit, with the Advice of his Majesty's Council, to ordain, and I DO ordain and appoint, that a general and publick FAST be observed throughout this Province, on Friday the Twenty-first Instant: And all his Majesty's Subjects within the same, are hereby strictly charged and commanded, as they tender the Favour of Almighty God, religiously to observe the said Day, by attending the publick Worship of God; which is hereby likewise directed and enjoined to be performed in all Churches and Chapels, and other Places of publick Worship within this Province: Of which previous Notice is to be given, by the publishing these Presents to the several Congregations in due Time.

GIVEN *under my Hand and Seal at Arms, at Fort-George in the City of New-York, the first Day of* [illegible]

the Battoemen noticed his frequent Acts of Defiance to the Enemy for some Time; and hearing no firing on either Side, concluded they surrendered upon Terms; upon which two of the Battoemen put back to the Fort to give Intelligence, and the other two came into Albany as aforesaid.

It is thought this Gang of our common Enemy Waylaying that new Road, was with a Design to cut off all Succours to the Two Forts; and this Event will probably put those who travel it upon their Guard.

Five or Six Vessels from the Eastward past-by this City since our last for Albany, deep loaded with Provisions.

They write from Halifax of the 10th of April past, That on the preceding Evening five Grenadiers belonging to Warburton's Regiment, seized a small Schooner in that Harbour which was ready to sail for Lunenburg, having on-board the Master, whose Name was Crook, one Sailor, and an old German Passenger; and ordered the Captain to carry them to Cape Briton. Crook finding it was endless to contend with five sturdy Fellows, and being taken at a Non plus, immediately put to Sea, with the Wind fresh at South, which carried them as far to the Eastward as a Place called *Old Head*, where the Captain told them there was no Water on board, and that that was a good Place to water at; upon which two of the Grenadiers made no Scruple to jump into the Boat, and went ashore, when Crook thought it a good Opportunity to recover his Vessel, and taking up the Axe under Pretence of splitting Wood, made as little Scruple to knock down two of the Fellows, whilst his Sailor at that Time on the Quarter Deck, snatch'd up one of the Muskets belonging to them, and presented it to the other's Head, swearing he'd blow his Brains over-board if he motioned one Inch, upon which the poor Fellow surrendered, and Capt. Crook first bound Hand and Foot the Two which he subdued, and then tied the other's Hands behind him. The two Soldiers who went on Shore fell into the Hands of the Indians, who came in two or three Canoes after the Schooner, but the Wind luckily escaped, and on

in Halifax, where the three sentenced the 15th, and ed the Day after, but Good- finished their Days the 17th.

House breaking some Nights

n Halifax. That Commodore [illegible] ships under his Command in that Harbour, to be ready, as he intended to put to Sea the First of May, and to cruize off Louisburg.

By Advice from London, (via Boston,) we are acquainted with the Death of Mrs. Catharine Goddard, Wife of Mr. James Stanley Goddard, Merchant in London, and Daughter of Doctor Archibald Fisher of this Place: A Lady who in her Life was so remarkable for her many amiable and engaging Qualities, that her Death is universally regretted.

PHILIP CUTLER *has removed from the House he formerly lived in Broad-Street, to the House of the Widow Stephenson, in Dock-Street, between the Old-Slip and Coenties Market; and continues to sell all Sorts of European and India Goods on reasonable Terms.*

BILLETS for the fourth Class are come to hand in Beaver-Street, from 601 to 900; from 1931, to 1980 from 3881 to 3880, from 7301 to 7500, from 5171

Illustration 7: Newspaper Account of Conviction of Famous Counterfeiter

Monday last *Owen Sullavan*, alias *John Living ston*, alias *John Brown*, by which three Names he was indicted by the Grand Jury a few Days before, was try'd at the Supreme Sessions for this City and County, and capitally convicted *of counterfeiting the current Bills of Credit of this Colony, emitted in the Year 1737, and of passing them, knowing them to be counterfeit*; and on Thursday received Sentence, and is to be executed on Friday next the 7th Inst.

And on Tuesday arrived here Andrew Montour, with about Thirty of the Senecas Tribe, from Philadelphia, on their Way to the Mohawks Country. They are said to have removed some Years ago from their native Country near where Niagara is now erected, to or near the Ohio, but are now inclined to live with their Friends. Other Bodies of the same Tribe are likewise look'd for removing to the Northward.

Wednesday last came to Town from Boston, His Excellency General Shirley. He was accompanied by a Number of Gentlemen who went to meet him upon the Road, and saluted by Fort-George when he came to his

SOURCE - New-York Gazette, or Weekly Post Boy, May, 3, 1756.

within three Yards of the House of Mr. [illegible], on the Dock at the White-Hall Slip, where a Number of Persons were then standing, who happily received no Damage by it; but in its [illegible] from the Earth, it scarify'd and wounded a Carman's Horse upon the near Shoulder so bad that the poor Creature was obliged to be knockt on the Head to put it out of its further Pain. No other Damage was done by the [illegible] of any of the other Pieces, as we have yet heard of. Some of the Windows in the Neighbourhood were [illegible]'d to Pieces by the Report.

His Excellency Governor [illegible] arrived at Albany on Thursday last.

Some of General Webb's Servants and Part of His Excellency's Baggage, arrived here from last Monday from Ireland, by the Way of Philadelphia.

Last Thursday the Trustees of New-York COLLEGE held a Visitation, when many Gentlemen of Learning were present, and very well pleas'd with the Performances of the Pupils; especially several Speeches, both in English and Latin, which were handsomely delivered by them on that Occasion.

Several Companies of One hundred Men each, have arrived here [illegible] Parts of this Colony, as Part of the Thir[illegible] and Fifteen effective Men which His [illegible] Governor is impowered [illegible] [illegible] for a general Muster throughout this City and County.

Capt. William Flouy, in the Schooner Betsey, bound from York in Virginia, to Winyaw in South-Carolina, was overset the 17th of March last in a violent Gale of Wind, and every Man on board drowned except one Man, named Finch, who continued on the Wreck to the 21st of March, in Lat. 31. when he was happily taken off by a French Schooner bound from Missisippi for Martinico, from whence he got to St. Eustatia, and gave the above Information.

Capt. Roome from Georgia on the 22d of March last being in the Latitude of [illegible] [illegible]

THOMAS JOHNSON, School-Master, is removed from the House he lately lived in, in Broad Street, to the House opposite to Mr. Sickles, [illegible], in New Street, where Reading, Writing, Arithmetick, Vulgar and Decimal, and Merchants Accounts, is performed in the best Manner, with Care and Dispatch. [illegible]

DESERTED a few Days ago, from Capt. MICHAEL THODEY's Company, in the Provincial Regiment of New-York, Edward Kelly, born in Ireland, a Weaver by Trade; aged about 30, well set, and about 5 Feet 9 Inches high, wears his own Hair, has a sandy Complexion; came from the Jersies here, and was inlisted by Lieutenant Tuck. Whoever takes up and secures the said Deserter, so that he may be had again, shall have Twenty Shillings if taken in Town, and Forty Shillings if taken out of Town, and all Charges paid.

TO BE SOLD.

A Plantation in Morris County, in East-Jersey, where John Jackson formerly lived, about 10 Miles from Col. Ford's, containing near Six Hundred Acres of as good Land counted as any in the Province, about 50 Acres of it is cleared and in good Fence, with a small framed House, a good large Barn forty Feet Square, and an Orchard with upwards of 300 bearing Apple Trees, [illegible] sufficient for a Mill, and [illegible] may apply to Hartshorn Fitz Randolph, living on the Premises, who will agree on reasonable Terms, both in Price and Payment; And either the whole or only one Half of the Land will be sold, as may suit the Purchaser. [illegible]

WHEREAS in the Month of May, 1751, Edward Corther, of Hempfield Township, in Carlisle County, and Province of Pennsylvania, did abscond from his Family without any just Cause or Reason; and took with him from its boarding Place in the County of Lancaster, a female Child of about Seven Years old, named Mary Quin, Daughter of the Subscriber, by her first Husband; and him [illegible] to the great Grief [illegible] likely Man, broad Complexion, and his Left Hand cut [illegible] remaining: His Dress is uncertain, as he has been gone so long. The Child was cloathed with a blue white and red striped Petticoat, a short Gown of striped Holland, with a black Velvet Cap, and has a remarkable Scar on her Left Arm, by a Fall she had in the Fire. Whoever will bring the Child to Thomas Doyle, Hatter in Lancaster, shall have a Reward of Five Pistoles, and all reasonable Charges paid. Or whoever gives Intelligence to the Office in Beaver-Street, how the Child may be recovered, or the Man himself heard of, will be thankfully Rewarded for so benevolent an Action. [illegible] MARY CORTHER.

Illustration 8: Newspaper Account of Delay of Execution 'for want of hangman'

[illegible] Owen Syllavan, alias John Livingston, alias John [illegible], the forty thousand Pound Money-maker, who was to be executed on Friday last pursuant to his Sentence, for the Want of a Hangman was respited until Saturday; but the Gallows being cut down on Friday Night by Persons unknown, and Jack Ketch, Esq; being still wanting, his Time was farther prolong'd to this Day, when he is certainly to make his exit.

The Ship Boyne, Capt. Godfrey, bound to Belfast from Philadelphia, is cast away on Barro, one of the Western-Islands of Scotland; Nineteen of the People are drowned, and the Captain and seven more saved.

A Brigantine bound to Drogheda from New-York is cast away.

We hear from Virginia, that the Government at their own Expence, are going to send the French Neutrals that are there to England.

JOHN HA[illegible]

PHILIP CUTLER is removed from the House he lately Lived in Broad-street, to the House of the Widow Stephenson, in Dock-Street, between the Old-Slip and Coenties Market; and continues to sell all Sorts of European and India Goods on reasonable Terms.

High Water at New-York, this Week.

Monday, 18 m. after 6 || Friday, 50 m. after 9

SOURCE - New York Gazette, or Weekly Post Boy, May 10, 1756.

Early in 1762 John Higgens was tried and convicted of altering and passing New York bills of credit. He was sentenced to be executed on February 12th, and, according to the February 22, 1762 edition of the New York Mercury, he was. Interesting here is the fact that Higgens was one of five men picked up for altering and passing, and the only one of the five to be executed. The reason for this appears to have been that two of his confederates turned Crown's witness against him (Scott, 1953). No record exists of any of the other men even being tried.

In April of 1766 three men, John Davis, Michael Smith, and William Gilliland, were indicted for "deceit" in passing New Jersey bills of credit in New York. Only Davis was tried, convicted, and sentenced (to one hour in the pillory) (Ms. Mins. SCJ, 1764-1766, pps. 380, 381, 394). Smith's case was boundover to a future court session, and when no one apepared to prosecute, he was discharged (Ms. Mins SCJ, 1764-1767, p. 154). Gilliland pleaded not guilty (Ms. Mins. SCJ, 1764-1766, p.390), and no further record appears of his case. Smith and Gilliland were among twelve witnesses who appeared for the Crown (none appeared for Davis) which, as with Higgens confederates, may have to do with why they were not prosecuted more vigorously. In any event, the behavior of the three men led to the July 3, 1766 statute making it a felony without benefit of clergy (instead of a "deceit") to counterfeit, alter, or pass, in New York, bills of credit of any other colony.

After the passing of this statute no case appears of a counterfeiting felony resulting in anything other than an execution or pardon. On October 30, 1767 an elderly man, Timothy Green, from North Carolina was tried in the Supreme Court for the 'misdemeanors' of attempting to have North Carolina plates made in New York (presumably for the purpose of counterfeiting North Carolina's bills and passing them in New York and elsewhere) and possessing false coins. Neither of these acts were felonies; but the jury and judge did not dismiss them lightly. As paper currency was becoming more and more suspect, coining incidents seemed to be increasing. The jury convicted quickly; and Green (despite his age), was sentenced to the pillory and to public lashings to be administered throughout New York City (Ms. Mins. SCJ, 1766-1769, pps. 317, 319, 323, 326).

In 1769 another elderly man, John Jubeart, was jailed, tried, convicted, and executed for passing false coins. According to the New-York Gazette, or Weekly Post Boy of May 15, 1769 (p. 2), Jubeart, a blacksmith, had passed a few counterfeited Spanish milled dollars to different persons, one of which:

> ...suspecting the Fraud, detected him, whereupon he pretended to want to ease himself, and went down to the Dock, where he was seen to attempt hiding something in the Dirt, which being searched, a Purse with six more Dollars of the same kind, and several Implements for counterfeiting were found. On his examination he said, he was born on Staten-Island; was a Blacksmith by Trade, and had formerly followed that of a Tinker, in all the Colonies from Boston to North-Carolina...and by some loose Hints he appears to have been acquainted with Casey's Gang (Casey was a mariner suspected of coining and paper counterfeiting), there is not much Room to doubt his being one of them: He was committed to Jail, for further Examination.

Jubeart claimed that he did not know that the coins he had passed were counterfeits. He was tried on July 28th. Six witnesses appeared for the Crown, and two for Jubeart. Jubeart was found guilty and was sentenced to be hanged on August 23rd (Ms. Mins. SCJ, 1769-1772, pps. 62-65, 69). However, his sentence was respited until September 6th in the hopes that the government might gain information about his associates. No information was forthcoming. The New-York Gazette, or Weekly Post Boy of September 11, 1769 (p. 3) reported that he died penitent, and denying that he had any accomplices.

This is the only recorded case of a coiner being executed since the passage of the 1745 statute making coining a capital offense. Others who were apprehended either fled jail, were acquitted, or pardoned. Jubeart's story, though, is especially interesting because it appears as though he stumbled into a life of crime, at an advanced age, out of admitted psychological despair (Owen Sullivan, for example, seemed rather smug about his criminal acts.) for which neither the court nor the governor showed him mercy.

Based on the broadsheet, put together while he was imprisoned (Jubeart, 1769), Jubeart had begun life as the child of industrious, honest parents who had instilled in him the principles of virtue and purity. His wife and several of his children had died over a period of years, leaving him "unsettled" and sometimes "delirious," propelling him to begin wandering from place to place. At one such

place he discovered a silver mine, and drifted into a life of coining for want of "necessaries."

The following year a jury was much more sympathetic to Peter Lynch, charged with altering and passing a New Jersey bill of credit in New York, than it had been to Jubeart. Lynch was tried and acquitted on January 17, 1770, (Ms. Mins. SCJ, 1769-1772, pps. 104, 120, 143). Judging from the limited information available in Lynch's and Jubeart's cases, it appears as though Lynch may have escaped lynching because the Crown was unable to produce sufficient evidence against him. Lynch had four character witnesses to a single witness for the Crown (Jubeart had had two character witnesses, but the Crown had six). Also, unlike Jubeart, Lynch was not suspected to be part of a counterfeiting gang, and perhaps thus perceived to be less dangerous.

Though not linked to any counterfeiting gang, but with ample evidence against them, Lewis Jones, a printer, and Samuel Mount, a shoemaker, were found not guilty, in 1770 and 1771 respectively, of passing New Jersey bills in New York. Less sympathy existed for counterfeiters than earlier in the century, and in both cases a good number of witnesses appeared for the Crown (7 and 5 respectively); yet the men got off. Maybe they were acquitted because each had more, and better, witnesses (8 and 10 respectively) than did the Crown (Ms. Mins. SCJ, 1769-1772, pps. 184, 187, 445-447); and/or, unlike many accused counterfeiters, they lived, worked, and were

known, in the community, and the jury may have been reluctant to condemn its neighbors to death.

In June of 1772 two men suspected of operating together were jailed for passing New York bills of credit. One of the men, William Hooker Smith, was a doctor, the other, Felix Meigs was a mariner. No record exists indicating whether or not Smith was tried, but Meigs was tried and convicted on July 30, 1772. Eighteen witnesses appeared for the Crown, four for Meigs. Two days later he was sentenced to be executed on September 11th (Ms. Mins. SCJ, 1772-1776, pps. 32, 2, 37).

Meigs was pardoned in April of 1773 (Ms. Mins. Council, 26: 351). Goebel and Naughton (1970: 755) discussing reprieves, claim, "An unusual case was a request from the Governor and Lieutenant Governor of Connecticut for a reprieve of Felix Meigs, late of that province, in order that information could be sweated out of him about a ring of counterfeiters." Possibly the Connecticut Governors convinced the New York Governor that adequate information had been "sweated out," and it was appropriate that Meigs be issued a pardon. The Meigs pardon appears to demonstrate that New York practiced the intercolonial cooperation it had been urging (see p. 283).

Discussing the large Albany County Counterfeiting Gang, which operated in the 1770s in New York and several other colonies, Scott (1953 and 1991) stresses that these men were professional criminals who moved from country to country, colony to colony, and jail to

jail, learning from their travels, and from imprisonment, how to perfect their craft and escape detection and prosecution. Generally these perpetrators did not get caught, says Scott, or when caught, did not come to trial for one reason or another. However, some of them were captured and convicted.

John Lovely, John Smith, William Hulbert, Joseph Packer, and Gilbert Belcher were four such men. They were caught, tried, and convicted in Albany, and, except for Hulbert, who provided authorities with the names of over ten accomplices, all were hanged there in 1773. Their 'dying speeches' contained the common themes of mobilty, recidivism, and resentment. The men admitted to having engaged in counterfeiting acts in several colonies, and to having been jailed and punished in some of these other colonies. Though confessing to certain facts, they justified their behavior with one or another 'casting blame' excuse.

According to his "Last speech, confession and dying words," John Smith, was born in New Jersey and lived there until he was sixteen. He had been exposed to the "hard scenes of life," unlike his older brother who had married into a North Carolina family and was living in "great splendor." Seeing his brother's wealth led him to seek the "filthy lucre of gain." He began to counterfeit colonial bills in Boston, where he was caught, convicted, and sentenced to be cropped and branded. He managed to escape jail and flee to New York, where he again pursued his illegal occupation until his capture.

More honest, and self analytical, were Gilbert Belcher's final words. He had moved away from his New England family to live in Massachusetts, where he met, and became associated with, anti-social and perversely inclined people such as himself. Though a silversmith by trade, he most enjoyed the gain he acquired through illegal means such as coining. He claimed that many of his associates encouraged his behavior, and were more guilty of counterfeiting offenses than he, but escaped prosecution through the use of connections and bribes (Scott, 1953).

During the same time that the Albany County Gang was in operation in the Albany, Connecticut, Massachusetts area, the Ford Gang operated in New York City, New Jersey, and Pennsylvania. Among the gang members were youthful, attractive, family men who claimed that they had been drawn into a life of crime by Samuel Ford, a well-dressed, thirtyish, master engraver and type maker whose work was so flawless that even experts couldn't distinguish his bills from official issue.

Jailed on counterfeiting charges in New York, Ford had managed to escape trial and move his operation to New Jersey, where he felt law enforcement officials were less persistent than in New York. Several of his associates were captured, tried, convicted, and sentenced to death in New Jersey (so Jersey officials must have been fairly persistent); yet, despite large rewards offered he was never captured (Scott, 1953). Apparently, not only was he an expert

counterfeiter, but also an expert escape artist.

At the same time the Albany and Fords gangs were in operation, individuals and small cliques were also making and passing counterfeits. On January 22, 1773 John Pell, of Massachusetts, was tried and acquitted in the Supreme Court for passing a five shilling bill (Ms. Mins. SCJ, 1772-1776, pps. 65, 68). Three witnesses appeared for the Crown and two for Pell. It's possible that Pell was acquitted, despite convicting evidence (pious perjury), because in comparison to members of the Albany and Ford gangs, and to other notorious counterfeiters, Pell seemed like a small time player, who, though guilty as charged, should not swing from the gallows for his offense.

Again, in 1773 (the year with the largest number of counterfeiting cases on record), three Westchester family men, considered to be operating together, were jailed for passing counterfeit bills in New York. All three managed to escape prison, and there is no record to indicate whether or not they were ever caught and tried (Ms. Mins. Council, 26: 350, 351, 354). Illustrated here, as in the Ford Gang membership, is that suburban family men, like less rooted members of society, were drawn to counterfeiting.

Responding to cases such as these, and to widespread evidence of large amounts of counterfeit bill in circulation, the government, on March 8, 1773, enacted a statute aimed at making plates harder to imitate (see Chapter V).

On April 25, 1775, a lone mariner, Nicholas Bassong, was indicted, tried, and convicted for passing a single coin, which it was alleged he knew to be false (Ms. Mins. SCJ, 1772-1776, pps. 188-189). Despite the fact that two witnesses appeared for the Crown and none for Bassong, sentencing was delayed and a pardon was recommended by the court (Ms. Mins. Council, 26: 442). The reasons are unknown. Similar to the Pell case, the court may have felt that Bassong's offense, and personal history, did not warrant the death sentence required by law.

On January 19, 1776 another lone operator, was tried for a coining offense. George Weght, a non-English speaking laborer, was discovered passing two counterfeit coins. Three witnesses appeared for the Crown, and four for Weght. Weght was acquitted for unstated reasons (Ms. Mins. SCJ, 1775-1781, pps. 61, 63, 64). Perhaps influencing the jury was the fact that in addition to condemning a small time operator to the gallows, it seemed unfair to convict someone who couldn't speak or read English, and really might not have known that the coins he was passing were false, or that 'passing' was a capital offense.

The record of case law closes with the imprisonment in 1776 of Henry Dawkins and the Young brothers, Isaac and Israel. The three men were tried and convicted of counterfeiting New York bills of credit, but were sentenced to jail terms rather than death. According to Scott (1953: 205, 195, and 1991), "...a little earlier

(they) would beyond doubt have been sentenced to death for their counterfeiting activities," but the government's efforts were directed elsewhere. The Revolutionary War had begun, those inclined to counterfeit justified their behavior by claiming that "...the Tories would counterfeit money anyway, so ...they might as well do it too;" and such explanation was sufficient to keep counterfeiters from the gallows.

The Record Shows...and Tells

Records of individual counterfeiting cases in colonial New York show us who engaged in the crime, the variants of counterfeiting they were accused of, the nature of the evidence presented at trial, jury verdicts, court sentences, and pardons. Newspapers and gallows speeches provide execution details. As questions are answered for a totality of cases, a pattern emerges. The consolidated record, though only 99 cases, tells a partial story of a happening, and its handling, at a specific place and time in history. Table 8 and Table 9 condense and summarize this just discussed record.

Who were the offenders?

In many cases neither court records, nor newspaper accounts, reveal anything about the typology of counterfeiters in colonial New York. Or, they provide very limited data. However, based on some supplied information, we do know a little about the individuals who partook of counterfeiting.

Females, as well as males, participated in, and were punished

Table 8: N.Y.S. COUNTERFEITING CASES, 1680-1776

Case	Occ	Year	Offense	#Witt	Disp	Sentence
Burrell		1680	coin&pas		confess	res/fine
Shore		1680	coin&pas		t & c	corporal
Rush		1690	coin&pas		boundovr	NFR
Ludlow	merchant	1698	pd c pas		confess	res/fine
Elliott	widow	1701	clip&utt		boundovr	NFR
Thomas,R.	mariner	1701	coin utt		t & a	--------
Fowler		1702	ccoinpas	many (D)	coinmelt	court fees
Onclebagg	silversm	1703	coin&utt		surety	fine
Thomas,S.	(F)	1703	clipping		disch,IE	--------
Vanderspie	(F)	1703	coin utt		disch,IE	--------
Barnes	innkp(F)	1705	clip&utt		t & a	--------
Kingston	baker	1705	clip&pas		t & a	--------
Vank		1706	coining	9 (C)	t & c	corporal
Roberts		1706	coining	9 (C)	t & c	corporal
Watson		1711	coining		disch,NP	--------
Berry	tailor	1713	cftg BOC	many (D)	t & c	pardoned
Mark	engraver	1713	cftg BOC	many (D)	confess	pardoned
Hunt		1720	BOCpas		t & c	--------
Lynstead	learned	1723	cftg BOC		suicide	--------
Wentwood		1723	coinpas		boundovr	NFR
Steel		1723	coinpas		boundovr	NFR
Mense		1725	alterpas	11C,18D	t & a	--------
Jones,J.		1725	BOCpas	3 (C)	t & c	pardoned
Willson	pr thief	1727	NJBOCpas	7 (C)	t & c	corp/jail
Wallace	pr thief	1727	NJBOCpas	7 (C)	t & c	corp/jail
Furman		1729	cftg BOC		t & a	--------
Conner	nopropty	1730	coining	8 (C)	t & c	executed
Copley		1734	coin utt	4 (C)	t & c	corporal
Johnson,J.	bookbinder	1735	cftg BOC		fledjail	NFR
Johnson,C.	innkp(F)	1735	uttrgBOC	6 (C)	t & c	corporal
Butler	pr thief	1737	coin utt	many (C)	t & c	corporal
Flood		1739	RIBOC cfg		confess	corporal
Steel	laborer	1739	RIBOC cfg		jailed	NFR
Haynnie	(F)	1739	coin utt	many (C)	t & c	corp/jail
Voorhees	mariner	1739	cftg BOC		fledjail	NFR
Walles		1740	uttrgBOC		boundovr	NFR
Jenkins	mariner	1740	cftg BOC	1 (C)	boundovr	NFR
Stevens		1744	cftg BOC	many (C)	t & c	executed
Scias	gang	1744	cftg BOC	many (C)	fledjail	NFR
Boyce	recidiv	1744	BOCpas	many (C)	fledjail	NFR
Moore	mariner	1745	coinpas		t & c	corporal
Killet		1745	coining	accompl	fledjail	NFR
Ryan		1745	coining	accompl	fledjail	NFR
Master		1745	coining		confess	fine
Bellemy	cfg gang	1747	##BOCcfg		boundovr	NFR
Shermer	cfg gang	1747	##BOCcfg		boundovr	NFR
Haynes	cfg gang	1747	##BOCcfg		boundovr	NFR
Dexter	cfg gang	1747	##BOCcfg		boundovr	NFR
Woodman		1751	cftg BOC		suicide	--------
Bill	recidiv	1751	cftg BOC		disch,IE	--------
Bakcas		1752	bcoinpas		confess	fine
Hix		1753	coinpas		jailed	NFR

Table 8:(continued): N.Y.S. COUNTERFEITING CASES, 1680-1776

Case	Occ	Year	Offense	#Witt	Disp	Sentence
Mace	laborer	1754	RIBOCpas		boundovr	NFR
Chase	laborer	1754	RIBOCpas	1 (C)	boundovr	NFR
Key		1754	BOCpas	1 (C)	fledjail	NFR
Barnwell	youngboy	1755	coining	4C,3D	t & a	--------
New	youngboy	1755	coining	4C,3D	t & a	--------
Vanheusen	youngboy	1755	coining	4C,3D	t & a	--------
Sullivan	recidiv	1756	cftg BOC	5 (C)	t & c	executed
Hamilton	silversm	1761	coining	2 (C)	suicide	--------
Lewis	tavernkp	1762	alterpas		boundovr	NFR
Dawson		1762	alterpas		NFR	--------
Higgens, J.		1762	alterpas	2 (C)	t & c	executed
Cooly		1762	alterpas		boundovr	NFR
Higgens,I.	mariner	1762	alterpas		fledjail	NFR
Ackerman		1763	coining		boundovr	NFR
Davis	laborer	1766	NJBOCpas	12 (C)	t & c	corporal
Smith,M.		1766	NJBOCpas		disch,NP	--------
Gilliland		1766	NJBOCpas		NFR	--------
Green	old	1767	cftg plts	1 (C)	t & c	corporal
Casey	mariner	1768	BOCpas		disch,IE	--------
Jubeart	oldblksm	1769	coinpas	6C,2D	t & c	executed
Lynch		1770	NJBOCpas	1C,4D	t & a	--------
Ketcham	pr thief	1770	coinpas		fledjail	NFR
Jones,L.	printer	1770	NJBOCpas	7C,8D	t & a	--------
Mount	shoemker	1771	NJBOCpas	5C,10D	t & a	--------
Finkell		1772	coinpas		fledjail	NFR
Smith,W.H.	doctor	1772	BOCpas		jailed	NFR
Meigs	mariner	1772	BOCpas	18C,4D	t & c	pardoned
Searles		1772	coining		fledjail	NFR
Carpenter		1772	coining		fledjail	NFR
Lovely	cfg gang	1773	BOCpas	many (C)	t & c	executed
Smith,J.	cfg gang	1773	cftg BOC	many (C)	t & c	executed
Hulbert	cfg gang	1773	cftg BOC	many (C)	t & c	pardoned
Packer	cfg gang	1773	cftg BOC	many (C)	t & c	executed
Belcher	silversm	1773	coining	many (C)	t & c	executed
Ford	ganglder	1773	##BOCcfg	many (C)	fledjail	NFR
Pell		1773	BOCpas	3C,2D	t & a	--------
Hubbs	famlyman	1773	BOCpas		fledjail	NFR
Miller	famlyman	1773	BOCpas		fledjail	NFR
Smith,T.	famlyman	1773	BOCpas		fledjail	NFR
Williams	cfg gang	1773	BOCpas		jailed	NFR
Rooley		1774	BOCpas		NFR	-------
Bassong	mariner	1775	coinpas	2 (C)	t & c	pardoned
Weght	laborer	1776	coinpas	3C,4D	t & a	--------
Allen	shoemker	1776	PABOCpas		NFR	--------
Dawkins	cfg gang	1776	cftg BOC		t & c	jailterm
Young,Ic	cfg gang	1776	cftg BOC		t & c	jailterm
Young,Il	cgf gang	1776	cftg BOC		t & c,	jailterm

SOURCES - Trial court records of the N.Y. Quarter Sessions (1691-1775) and the Supreme Court of Judicature (1691-1739, 1750-1776). N.Y. Colonial Manuscripts.

ABBREVIATIONS (Table 8) -

Disp-case disposition (F)-female (C)-crown (D)-defendant
pr thief-professional thief cfg gang- member of counterfeiting gang
recidiv-recidivist coin&pas-making and passing counterfeit coins
coinpas-passing a counterfeit coin res/fine-restitution and fine ordered
t & c-tried and convicted t & a-tried and acquitted NFR-no further record
pd c pas-paid coin passer clip&utt-clipping and uttering a coin
clip&pas-clipping and passing a coin ccoinpas-passing a clipped coin
cftg BOC-counterfeiting a N.Y. bill of credit alterpas-passing an altered N.Y.
bill of credit BOCpas-passing a counterfeited N.Y. bill of credit
NJBOCpas-passing a counterfeited N.J. bill of credit PABOCpas-passing a
counterfeited Pennsylvania fill of credit RIBOCcfg-counterfeiting a Rhode
Island bill of credit accompl-accomplice turned witness for crown
##BOCcfg-counterfeiting bills of credit of several states bcoinpas-passing
brass (vs. gold or silver) counterfeit coins pardoned-from death sentence
NP - no prosecutor appeared cftg plts - making BOC plates

Table 9: COUNTERFEITING DISPOSITIONS & SENTENCES IN COLONIAL N.Y.

Variant	#	Disch	Acq	Corp	Exec	Pard	Fined	Jail Term	Suici Aw Tr	Escap Jail	Jail NFR	Bndov NFR
Coining	38	3	7	7	2	1	6	0	1	5	1	5
%coining	100.0	7.9	18.4	18.4	5.3	2.6	15.8	0.0	2.6	13.2	2.4	13.2
%column	38.4	50.0	50.0	53.8	22.2	16.7	100.0	0.0	33.3	31.3	25.00	26.3
Paper	61	3	7	6	7	5	0	3	2	11	3	14
%paper	100.0	4.9	11.5	9.8	11.5	8.2	0.0	4.9	3.3	18.0	5.0	23.0
%column	61.6	50.0	50.0	46.2	77.8	83.3	0.0	100.0	66.7	68.8	75.0	73.7
Total	99	6	14	13	9	6	6	3	3	16	4	19

SOURCES - Trial court records of the N.Y. Quarter Sessions (1691-1775) and the Supreme Court of Judicature (1691-1739, 1750 - 1776). N.Y. Colonial Manuscripts.

Disch - cases discharged for lack of sufficient evidence or lack of prosecutor

Acq - tried and acquitted

Corp - convicted, corporal punishment (pillory, whipping, branding)

Exec - convicted and executed

Pard - convicted and pardoned (by royal intervention)

Fined - convicted and fined

Jail Term - convicted and punished by imprisonment

Suici Aw Tr - suicide while awaiting trial

Escap Jail - fled while jailed and awaiting trial

Jail NFR - defendant jailed awaiting trial, no further record

Bndov NFR - boundover to another court and/or no further record after indictment

for, the crime. Five of the six women indicted engaged in coining, one in paper counterfeiting. During the years of their indictments, their crimes were not capital offenses, thus none of them were sentenced to death. The two women who were convicted received corporal punishment.

Specific ages are not supplied in the records. Sometimes mention is made of the fact that a particular defendant was young, in his thirties or forties, or old. Based on such mention, it appears as though individuals of all ages were drawn to counterfeiting.

Individuals of all classes and occupations participated in the crime. Clearly it was practiced by gangs and professional thieves, but doctors, scholars, businessmen, merchants, and laborers also sidelined in one or another aspect of the fraud. It was a particularly appropriate crime for metalsmiths, engravers, and printers; and they are represented on the court rosters. Mariners, because they had easy outlets for counterfeits, were also well positioned to pass fraudulent currency, and the record indicates they didn't pass up such opportunity. Many of the accused appear to have been unmarried rootless wanderers, but family men and community members also engaged in the crime.

Several of the accused were recidivists from other colonies, but, no record exists of any defendant being tried, more than once, for counterfeiting in New York colony.Considering that the overall

recidivism rate in colonial New York was 16.36% (Greenberg, 1976: 212), this seems to support the conclusion that New York's counterfeiting laws, and their enforcement, deterred repetition of the crime within the confines of the colony.

What variants of counterfeiting were engaged in?

Counterfeiting charges embraced numerous offenses -- coin making, passing and clipping, bill making, passing, and altering, plate making, implement concealing. All aspects of counterfeiting were practiced in New York colony. As official coins became more difficult to clip or imitate, coiners became more skilled. As technology improved, legitimate and illegitimate dies and plates improved. Bills of credit became increasingly intricate. Bill makers who could not produce quality imitations often had plates made abroad, or turned to altering official bills. Statutes were periodically enacted labeling new variants as felonies. Counterfeiters then modified their operations (e.g. changed from counterfeiting bills to altering them, or from making New York bills in New Jersey to passing New Jersey bills in New York). Often defendants were indicted for several variants of counterfeiting but tried for only one of them.

Where did most counterfeiting acts take place?

According to New York court records, false coins and bills were made throughout New York colony, in other colonies, and overseas, but generally were passed in urban areas or bustling border towns

(e.g., New York City, Albany, White Plains), or in neighboring colonies. New York City Quarter Sessions records indicate that large numbers of counterfeit bills were regularly detected and seized in New York City in the course of commercial transactions and ship inspections, brought into court, and burned. Counterfeiting is heavily dependent upon a perpetrator's mobility, anonymity, and/or channels of easy distribution (e.g., outbound ships, retail establishments, densely populated areas, travelers); and colonial New York provided such circumstances.

How much false currency was in circulation?

Just as we have no way of knowing how many people actually engaged in counterfeiting,we have no way of knowing how much false money was in circulation. According to court records and newspaper accounts, the colony was deluged with counterfeits; but here we are dealing with 'tip-of-the-iceberg' assumptions (based on counterfeits recovered), and perceptions which may have been accurate, but also may have been exaggerated. In any event, the perception of increasing currency debasement was as consequential as the reality in that it caused the colony's money to become suspect and fragile.

How were convictions secured?

Court records indicate that counterfeiting convictions were obtained through witnesses testimony. Victims, and other Crown witnesses, appeared at trial and testified that the defendant had passed them, or others, false currency, and/or that the defendant

was known to make and/or possess (presented in court as evidence) false money and counterfeiting tools. Sometimes accomplices testified against defendants in order to gain pardons. The fraudulence of any currency seized as physical evidence was established before trial. Not only did local newspapers explain how to distinguish between real and fake bills, but local printers and metalsmiths were available to act as expert witnesses.

Often in question was whether a defendant "knowingly" passed the counterfeited coin(s) or bill(s), and/or how notorious he or she was. Professional thieves, gang members, and infamous recidivists from other colonies were confronted by large numbers of Crown witnesses asserting intent to defraud based on poor character and reputation. Convictions occurred in all such cases on record.

If a defendant accused of a felony was a one-time, or small time, operator, or a community member able to produce character witnesses, or was able to convince a jury that he was unaware that the money passed was fraudulent, he was almost always acquitted or pardoned.

In only one case (that of John Jubeart) was a defendant with character witnesses convicted and/or executed. (In this case the Crown had three times the number of witnesses as Jubeart, and Jubeart was suspected of gang involvement.)

Dispositions and Sentences

In addition to providing background information about indicted

counterfeiters in colonial New York, the specific offenses they committed, and how they fared in the judicial system, the combined court records of the colony provide an overall statistical picture of how the crime was handled in the courts of early New York.

Table 9 shows that out of 99 individuals indicted for counterfeiting frauds, 51 (or approximately half) were tried. Of the 48 cases that weren't tried, 3 were suicides of individuals awaiting trial, 16 were jail escapes, and 6 were discharges (for insufficient evidence or because no one appeared to prosecute). The outcomes of the remaining 23 cases were not recorded.

Of the 51 people tried, 37 (72.5%) were convicted. Thirteen (25.5%) received corporal punishment. Nine (17.6%) were executed. Six (11.8%) were pardoned from death sentences. Six (11.8%) were fined; and 3 (5.9%) were sentenced to jail terms.

Any distinction between the treatment of coiners and paper counterfeiters (less executions, less pardons, and more fines) can be attributed to the fact that coining was not a capital crime until 1745, whereas paper counterfeiting was declared a capital crime in 1709.

Conclusion - A Muscular Maybe

A concurrent study of the anti-counterfeiting legislation of early New York, and the court records of counterfeiting cases in the colony, demonstrates that the government was aware of the relationship between a sound currency and commercialization, and was

serious in its efforts to protect its currency and promote economic development. It is evident that law was viewed as a mechanism of such protection and promotion. Less clear is whether the enacted 'thwart' legislation actually thwarted counterfeiting in commercializing colonial New York. We have only a strong maybe.

It is impossible to directly measure an event (such as colonial counterfeiting) that might have happened three hundred years ago, but didn't because of a deterrent (thwart law). However, indirect measurements indicate that the anti-counterfeiting legislation of colonial New York may have contained or suppressed currency frauds within the colony.

Table 4 (see p. 174) shows that though the incidence of counterfeiting increased throughout the colonial period, overall the rate (per 100,000) did not go up. It remained relatively stable, despite an increasing and desperate need for currency within the developing colony. Part of this is attributable to the fact that the population was rising rapidly; but this stable rate also might be a result of the fact that over half of all accused counterfeiters went to trial, that 72.5% of those tried were convicted, and that a significant percentage of those convicted were either executed, severely and publicly beaten, or imprisoned in dismal, unheated jails. Could not such facts have served to make counterfeiting a less attractive crime, to frighten off some would-be perpetrators, to warn the populace that counterfeiting

laws existed, and the judicial system was enforcing them.

As there are no recorded cases of recidivism (within New York colony) of indicted counterfeiters, we could conclude that the enacted statutes, if not effective in eradicating the crime, were at least instrumental in moving it out of the colony, in relocating offenders to a colony where counterfeiting was a misdemeanor rather than a felony (e.g. Massachusetts), or where stringent laws existed, but were not enforced by the courts (e.g., Virginia).

Also, an examination of court records indicates that the anti-counterfeiting laws may have been the cause of 'shifts' in the variants of counterfeiting practiced. As previously mentioned, when statutes were enacted against one, and then another, specific aspect of counterfeiting, those intent on counterfeiting circumvented the newly labeled crime by coming up with a new, and momentarily non-criminal, twist (e.g., altering vs. bill making). Legislation didn't stop counterfeiting frauds, but apparently it suppressed particular variants. Unfortunately, though, it also pushed some counterfeiters to greater shrewdness, forcing lawmakers to keep pace with such shrewdness.

In addition to shifts in variants of counterfeiting practiced, court records show there was a shift in participation, a shift away from the marginal coiner or counterfeiter to the mobile professional criminal and to gang involvement. As legislation became more precise and harsh, it appears as though ordinary citizens and sideliners

came to view counterfeiting as too risky, and left it to criminally inclined risk takers. However, it must be noted in this regard that treating counterfeiting as a capital offense was problematic. Often defendants were acquitted or downcharged, though guilty, because a jury was unwilling to condemn them to the gallows.

The attack on counterfeiting in colonial New York was a combined one. The legislature wrote precise, thwart-rich statutes, and the courts attempted to enforce them. Additionally, newspaper publishers, and many other segments of the population, assisted in the apprehension and prosecution of counterfeiters. Clearly there existed both an awareness of the possibly harmful effects of counterfeiting on commerce and an ongoing effort to inhibit the relationship. Whether or not such effort was immediately or impressively "effective" (in terms of reducing counterfeiting in colonial New York) is far less important, for the purpose of this study, than the fact that continual legal changes were adopted by the legislature in its response to the threat posed by counterfeiting.

CHAPTER VII: CONSTABLES, JAILERS, JURORS, AND OTHER PARTICIPANTS IN COLONIAL NEW YORK'S CRIMINAL JUSTICE SYSTEM

The February 21, 1757 edition of the New York Mercury described New York's night time police force as a, "Parcel of idle, drinking, vigilant Snorers, who never quell'd any nocturnal Tumult in their lives...but would, perhaps, be as ready to join in a Burglary as any Thief in Christendom." Such perception of policing in early New York was widespread, and brings into question the adequacy of the entire criminal justice system in combating counterfeiting. The legislators may have written good laws, but who was reponsible for enforcing these laws, and how well did they do their jobs?

Many worked, in several different capacities, to suppress counterfeiting in colonial New York. Some believed such combined efforts were successful, or better than in other colonies. Others consider the performance dismal and doomed. However, as mentioned in Chapter VI regarding Samuel Ford and his confederates,

professional counterfeiters often chose to ply their trade outside of New York colony in order to avoid New York's criminal justice system, which they believed to be too arduous in its pursuit, prosecution, and punishment of counterfeiters.

Agreeing with this perception and discussing the complete debasement of Virginia's currency, numismatics expert Bruce Korver claims that counterfeiters who forfeited their lives in New York "...made two basic mistakes: their crimes, and not having committed them in Virginia (Korver, 1990: 896)."

Korver explains that the make up of Virginia's bills (unlike those of New York) was such that counterfeiters could reproduce them with great accuracy, that Virginia's police force made little effort to apprehend counterfeiters, that jurors and jailers were easy on counterfeiters, and that Virginia's judicial system was such that legislative warnings against counterfeiting were "idle threats." The Virginia judicial system, unlike that of New York, simply ignored the laws, says Korver. "Despite vocal protests and threats of capital punishment, counterfeiters in Colonial Virginia continually broke the law as officials looked the other way (1990: 896)."

Contrasting New York and Virginia in their treatment of counterfeiting, and contending that New York's criminal justice system did not "look the other way," Scott (1953: 197) says, "It was due to the enterprise of individuals and magistrates and the severe laws of the colony that the currency of New York was not

discredited, as for example, was that of Virginia." More commerce oriented than plantation rich Virginia, eighteenth century New York feared the decline in trade associated with currency debasement. Officials persistently labored to mobilize the populace and the criminal justice system in anti-counterfeiting endeavors.

New York's sophistication and diligence in protecting its commerce had much to do with the colony's stage of economic development. According to Friedman (1972), the various American colonies developed their own individual criminal justice systems based on their particular missions, and where they were developmentally. Eventually counterfeiting would become "...a vast and highly organized underworld activity which extended throughout the colonies and posed a constant threat to their currency and commerce (Scott, 1957);" at this point officials, in all colonies, would no longer be able to "look the other way."

Scott (1953) maintains that several segments of the New York population -- constables, jailers, jurors, and hangmen -- were involved (though imperfectly) in counterfeiting suppression, but, as the Revolution drew closer, and intercolonial counterfeiting scams increased, the problem became overwhelming, even in New York. Smaller colonies had begun to focus more strongly on counterfeiting control, thus prompting their professional counterfeiters to create and circulate their domestic bills in nearby colonies.

Rhode Island counterfeiters, for example, felt forced to

transfer their counterfeiting activities out of their politically and regiously liberal colony after the enactment in 1742 of some harsh (but not capital)[1] anti-counterfeiting legislation. A small colony, in terms of size and population (see p. 256), Rhode Island had a rapidly growing counterfeiting trade due partially to its numerous waterways which provided easy channels of distribution for bogus currency. After 1742 many Rhode Island counterfeiters began making and 'passing' bogus Rhode Island bills in New York and other nearby colonies (Scott, 1957). Though counterfeiting and passing New York bills had been a capital offense in New York since 1709, the passing of out-of-colony bills current in New York would not become a felony until 1766 (see p. 203). Thus, roving Rhode Island counterfeiters were more safe, and New York was less safe.

Focusing on the uncontrollable problem of counterfeiters operating intercolonially, and with several different currencies, and touching upon the ultimate resolution of the problem of intercolonial counterfeiting, Korver (1990: 1007) says, "With the successful conclusion of the Revolutionary War, responsibility for the production of (a single) currency - and the prosecution of counterfeiters - fell upon the federal government."

This, of course, is true; however, before the Revolutionary War, and before the prosecution, and overall handling, of counterfeiters "fell upon the federal government," it fell upon collections of frequently unwilling, and poorly coordinated,

[1]The New England colonies were more resistant to capital punishment for property offenses than were the mid-Atlantic and southern colonies. Though after mid-eighteenth century, counterfeiting would become a capital crime in all the colonies.

citizens in each colony. Cooperation had to exist between many segments of a colony's criminal justice system, if the colony was to discourage counterfeiting. Legislation, no matter how well-written, and responsive, could not alone suppress counterfeiting. As the society modernized, and new variants of counterfeiting became possible and/or practical, lawmakers labeled such variants as crimes, and specified how they might be thwarted. Societal consensus and commitment also were required, but only marginally forthcoming. Ordinary citizens, legislators, constables, jailers, juries, judges, governors, hangmen, and others had to share a singular negative perspective on counterfeiting, and a determination to combat it. This may have been the situation in New York more than in some other colonies, but it was nevertheless a flawed effort.

The Public Perspective

The degree to which a criminal justice system is effective, particularly in a non-totalitarian society, is determined largely by its citizen population. This is well demonstrated by the treatment of counterfeiting in colonial New York. The more that merchants, businessmen, and others perceived of counterfeiting as a problem, the more serious the legal attention it received.

As discussed in chapter V, in the early part of the colonial period public pressure existed to go easy on counterfeiters, who were often viewed sympathetically. Many colonists did not perceive of counterfeiting as a socio-economic threat, or view counterfeiters

as common criminals. Much of the citizenry did not understand the mechanics of how a nation could be ruined by an excess of counterfeiting activity (Hoyt, 1977). All classes of individuals engaged in it. Some rationalized that it helped the economy by increasing business activity (Kammen, 1975). Others regarded counterfeiters not as hurting the colony, but as 'getting by' in a society where government was indifferent to the needs of the governed (similar to how tax cheats are regarded today). Legislatively coin counterfeiting would move from a civil violation in 1683 to a capital crime in 1745. Judicially it would 'progress' from punishments such as resitutions, fines, and whippings to death sentences. But early on it was treated with compassion, indifference, and relatively mild censure.[1]

In addition to such initial response, counterfeiting was befriended by immigration and illiteracy. Colonial New Yorkers were duped by counterfeiters as many were unable to read English, which was foreign to them, or any language, and would accept currency which contained glaring errors of all kinds (Scott, 1957). They accepted coins that were clipped, coins that were fake, and bills with words spelled incorrectly. Often they were ignorant of the published warnings of newspaper publishers (as they couldn't read them), and unknowingly participated in the increasing devaluation of their own money. Given this situation, counterfeiters, despite increasing legislative and judicial response, were encouraged to

[1]Paper counterfeiting, because bills of credit were state issue, became a capital offense in 1709, the year of the first bill of credit emission.

take risks and persist in their efforts. Not only didn't they view themselves as social outcasts likely to confront popular rage, but they had good reason to believe they would never be caught. Frequently it took incentives such as financial rewards for the government to spur citizen interest and cooperation in gaining arrests and convictions.

Batchelder (1982) explains that even assuming a population with some desire and information to deter counterfeiting, the problem was still formidable. Bills of one colony were often passed in other colonies, where there was little familiarity with out-of-colony currency. (There would be no single, national currency until several years after the Revolutionary War.) A citizenry barely familiar with the intricacies of its own currency knew little, if anything, about the out-of-colony currency it accepted (often out of desperation). Design variations in the different denominational issues of each colony compounded the problem.

How then, asks Batchelder, could a counterfeiter be detected? In the absence of an intercolonial counterfeiting guidebook (which would be published in some colonies towards the end of the 18th century), or an 'expert witness' able to testify about the authenticity of a particular bill, a captured suspect was likely to go free. Some printers were familiar with nearby out-of-colony bills, but not necessarily with every new and different emission of a neighboring colony (as each new emission usually contained new

design variations). No intercolonial standard (e.g., specific paper, watermark, print type, use of color) existed to tell a real bill from a fraudulent reproduction. Adds Newman (1967: 23), "Genuine bills were often artistically crude and poorly printed (while false ones could be well crafted and convincing), and soiled, torn, patched and sewn bills made detection of counterfeits most difficult."

The Colonial New York Constabulary

Although sometimes it was the victims themselves who brought counterfeiters into court in colonial New York, often town magistrates directed sheriffs and constables to capture suspected counterfeiters. The degree to which this pivotal (in terms of beginning the process) task was effectively performed had much to do with the nature of the police force of the day.

During its colonial period New York suffered greatly from an inability to fill important police positions with qualified men. Says Greenberg (1976: 167):

> ...the first link in the chain of criminal justice in colonial New York - the exercise of police powers by constables and sheriffs - was a very weak one indeed. Lacking the resources to attract qualified men to these positions, the colony suffered not only from the incompetence and corruption of those they were able to hire, but from the insufficiency of their numbers as well.

Insufficient resources, incompetency, and understaffing were just part of the policing problem of New York colony. The socio-economic circumstances of the developing colony, and the level and quality of law enforcement, were incompatible for political reasons.

Policing Incompatible With Liberty.

New York in the seventeenth and eighteenth centuries was undergoing rapid immigration, urbanization, and commercialization. It was the most ethnically and religiously diverse of all the American colonies, with numerous languages being spoken in the province. Such circumstances usually breed crime problems (see chapter III), and demand strong proactive, as well as reactive, policing in combating both violent and property crimes; but early New York was not receptive to police power.

New York's fledgling criminal justice system was modeled on that of England. It maintained eighteenth century Britain's aversion to professional police forces with numerous delegated powers. The prospect of a 'standing army' brought shivers to Britain's ruling elite, as well as to the British citizenry. Not surprisingly, the idea of substantial police power being delegated to a corps of unwilling recruits, or untrained hired hands, raised alarm in freedom worshipping colonial New York and in England:

> A tyrant might use this force to undercut or repress the liberties of the political community. The administrative challenge of organizing police and correction systems was also daunting. The English had scant experience in dealing with the problems of recruiting, training, financing, leading and controlling such forces (Langbein, 1983: 116).

As modernization enveloped England and New York, the tradition of an amateur police force would give way to professionalized law enforcement. However, this would be a nineteenth century development. Colonial New York, like eighteenth century England,

would struggle with the crime, vulnerability, and danger associated with inadequate policing in a modernizing, liberty-worshipping society. A (perceived) police state, with an accompanying criminal justice bureaucracy, would remain a disdained concept for decades. Until well into the nineteenth century, fear of organized law enforcement would result in an inadequate level of police response to counterfeiting, as well as to other crimes.

Policing Incompatible With Geography And Technology.

Just as policing was restricted by the political heritage of colonial New York, so too was it restricted by the landscape and (lack of) technology of the time. The mountainous, dense terrain of the colony, combined with few roads and often frigid temperatures, served to obstruct the discovery and capture of counterfeiters. Favorite operating locations of those making fake coins and bills, says Scott (1957), were backwoods districts, far away from the offices of the law. False currency would be passed in populated urban areas, but created in isolated, hard-to-find spots scattered around the colony.

Often whole families, communities, or gangs would control a remote outpost and make it clear, by their willingness to use physical violence, that intruders (particularly law enforcement officials) were unwelcome. Additionally, the waterways of New York assisted sea faring counterfeiters who frequently lived on, and worked out of, their boats, creating their fakes offshore, and out

of the reach of local constables. Court records and newspaper accounts report several cases of mariners making false coins or bills on the ocean off one colony, passing them while docked in another colony, and escaping capture by heading their ships to still another colony.

In addition to the landscape of colonial New York restricting the effectiveness of constables, so too were they limited by the lack of communication between colonies, and between settlements within New York colony. As already discussed, counterfeiters were often a mobile group. There were no telephones, or computers, whereby a law enforcement officer could call ahead for assistance in detecting or apprehending a fleeing suspect. No equipment existed for creating a composite sketch to be used in identifying a suspect. No police cars were available to enable a constable to patrol the colony easily, or answer leads quickly.

Addressing the limits of law enforcement in colonial New York, in the context of understaffing and communications, the Carey Report (1979: 7) says, "Since colonial towns generally maintained inadequate police forces, there was little likelihood that an offender would be arrested. The itinerant criminal was also protected by the lack of communication between settlements; knowledge of his past criminal conduct, which might lead to imposition of the death penalty, seldom reached the scene of his next crime." Thus, assuming a constable located a group of

counterfeiters, and could haul only one into court, he would have little way of knowing who was a hardened recidivist and who was a small time accomplice.

Colonial New York 'Cops' -- A Non-Professional Progression.

Policing in colonial New York did not improve as the colony developed. The law enforcement officer began as a non-professional when the colony was under Dutch rule, and remained so under British rule. There is no evidence to support the supposition that as the colony became more commercial, and more threatened by countefeiting, police officers became better equipped or trained to deal with the problem. Certain individual constables may have been more persistent, or more responsive to official and popular pressure, but as a corps of government servants, New York police officers were no more professional in their approach to counterfeiting in the eighteenth century than in the seventeenth century.

Prior to the English constable, the most important police official in colonial New York was the 'schout.' According to Bridenbaugh (1971a: 64), the schout, as well as the constable who proceeded him, was charged with keeping the peace, suppressing excessive drinking, gambling, and prostitution, and preventing disturbances while church services were in progress. He was to be on the alert for strangers who might becorne public charges. (It's unlikely he was also charged with being on the lookout for currency counterfeiters, as barter was the major means of exchange when New

York was under Dutch rule.) Generally, schouts, and constables, were inexperienced, uncommitted, community delegates assigned to, or elected to, neighborhood service for a given term.

Astor (1971: 10-11) depicts the schout as an unprofessional commercial security officer/executioner appointed by the Dutch West India Trading Company:

> In the New World, a Schout Fiscal (Sheriff Attorney) enforced the rules in New Amsterdam for the Dutch West India Company. The Schout Fiscal maintained order and carried out sentences of the governing body, including hangings. After dark a watch armed with rattles guarded the city. But the Schout Fiscal and the Rattle Watch disappeared in 1664 when the British assumed command.

It is interesting to note here that when New York was under Dutch rule, and later when under British rule, there was little differentiation between Policing and Corrections. Sheriffs, with the assistance of constables, were responsible for apprehending offenders, and for hanging them. Additionally, they often served as prosecutors and jail keepers. Greater differentiation existed between daytime and nighttime policing than between currently acknowledged, and separated, occupational specialities such as 'Policing' and 'Corrections.'

Richardson (1970: 8) stresses the importance of the "...medieval institution of the nightwatch" in colonial New York. The "Burgher Guard," formed by Peter Stuyvesant to act as a military watch at times of suspected Indian attacks, was the first nocturnal police protection in pre-Revolutionary War New York, says Richardson. "In 1658, when fears of Indian raids were widespread, a

paid 'rattle watch,' consisting of a captain and eight men, was established."

The Dutch Rattle Watch gave way to the use of a military patrol for nighttime policing when New York fell under British rule in 1664. A paid citizens' watch was substituted for the military patrol from 1684 to 1689. The citizens' willingness to pay for this watch indicates that (at that time) their fear for their safety, and their distaste for military policing were greater than their dislike of taxation. Nevertheless, political upheaval, and the outbreak of the first intercolonial war, led to the military again assuming policing responsibilities from 1690 to 1697 (Richardson, 1970: 9).

In 1697, when the first intercolonial war (King William's War) ended, a civilian nightwatch was restored. Four 'Bellmen' were hired by the mayor of New York City to make 'rounds.' They were to go around the city each hour, ring a bell, and announce the weather conditions and the hour. If during their rounds they met anyone disturbing the peace, lurking around, or committing property crimes (e.g., thefts, counterfeiting, gallows destruction), they were to do whatever they could to take these offenders into custody. As towns in the colony of New York grew in size, they too adopted this bellman-nightwatch concept of policing used in New York City (Greenberg, 1976).

For most of the years from 1697 to 1731 New York's police force was composed of these bellmen, sheriffs, and a few small, scattered,

daytime constabularies. After 1731 municipalities and towns moved back and forth between paid and unpaid citizens' watches, military patrols (during war years), amateur paid constabularies, and combinations of these arrangements. Throughout the colonial period, and well beyond, there existed a consistent inclination toward minimizing or curtailing any form of paid police protection.

The Paid Police Officer.

Colonial constables were the predecessors of our present day police officers in that they were paid peace officers who worked days and nights. Though nighttime crimes and raids were feared more than daytime crimes and raids, constables had the legal responsibility of ensuring compliance with the law -- at any hour. However, these paid police officers were not part of any professional police organization.

As was the case in England, and in the other American colonies, no organized form of protection or law enforcement existed in New York Colony. There was no hierarchy of advancement for the constable, and nobody aspired to become a constable. Constables were usually recruited from the artisans and tradesmen of the colony and received miniscule compensation for their work. The constabulary had neither the numbers, nor the resources, to prevent crime or maintain order (Bridenbaugh, 1971b).

When a crime such as counterfeiting was solved it was not because a special police unit, within a larger organization, had

been trained, equipped, and assigned to deal specifically with currency frauds. Constables were not experts in one or another aspect of crime detection and prevention. They were untrained generalists performing a dreaded, mandated community service for a limited period of time.

A look at the laws regarding the recruitment of constables in New York colony illuminates two important facts regarding qualifications. First, it seems clear that constables were nothing more than freemen and freeholders (landowners) elected by their communities, and paid for their services with citizens' taxes; and second, it appears as though it was difficult for the government to come up with competent, honest constables interested in helping their communities. A law enacted December 30, 1769 authorizing the election of "...a greater Number of Constables" in the County of Suffolk stipulates:

> ...it shall and may be Lawful to and for the Freeholders and Inhabitants of the said Towns...to elect and choose by a Majority of Voices...Constables in their respective Townships...(to) serve...for the then ensuing Year, or until there be another chosen...and every person so chosen who shall refuse...shall forfeit the Sum of five Pounds with Costs...(Colonial Laws, V: 21-22).

Nowhere in this law, or any other law regarding constables, is there any mention of specific job skills (not even a literacy requirement). Also, it appears as though there was no nominations process, or consent to run for office. The included threat of a fine for refusal to serve indicates a commonplace unwillingness to assume the duties of constable once elected.

Says Greenberg (1976: 163-165) in regard to the selection, competency, and integrity of constables:

> Many people preferred the payment of a fine to the dubious 'honor' of holding office; and after virtually every election...(fines were collected) from a less than public-spirited freeholder or two...In fact, there is some evidence to indicate that election as constable did not signify the community's respect for an individual at all. Rather, it seems to have been a device used occasionally to punish a freeholder who had antagonized his neighbors...In addition, those who...could not or would not pay the fine for refusing to serve tended to be negligent in the performance of their duty...Men of questionable integrity and scruples were sometimes the only people willing to serve, and the result was to decrease the authority of law in the colony.

Though constabulary service was a civic responsibility of all freeholders, the responsibility was not so assumed. Thus, the pool of dedicated, honorable constables was sharply reduced. Similarly, such perspective on the individuals serving as jurors is apt. Judging from a statute passed February 6, 1768 (and from similar statutes) "...to prevent the Defaults of Grand and Pettit (sic) Jurors, Constables, and other Persons," community participation in matters of justice was not easily forthcoming and had to be engendered by threats:

> Whereas thro' a defect of Sufficient Power in the several Courts of this Colony in levying Fines for the Defaults of Jurors, Constables and other Persons they are become very Remiss in their attendances, to the Prevention and Great Delay of Justice, more especially in the causes of the Crown (criminal cases, such as counterfeiting)...Be it therefore enacted...that whenever a Fine shall be imposed upon any Grand or Pettit (sic) Juror, Constable...for their Default or non attendance, the Sherif (sic) who Summoned them...shall distrain the Goods and Chattles of the Defaulter, and sell the same at Public Vendue, and retain out of the Produce of the same, a sum equal to the Fine...(Colonial Laws, IV: 1000-1001).

In addition to "...levying fines for the defaults of constables," the government found itself having to collect bonds upfront from constables to ensure the honest fulfillment of their duties. An act passed March 8, 1773, "...to oblige...Constables to give Security for the faithful performances of their respective Offices," illustrates the problem of constable corruption:

> Whereas several of the Counties within this Colony have sustained...Losses by the Misconduct and Insolvency of the Constable of the said Counties...Be it enacted...(that they) shall enter into Bond with sufficient Security to the Mayor of the said City and County...(Failure to) comply with the Condition of the Bond or Obligation...(shall make it) lawful for the said Mayor...to sue for and recover the same with Costs of Suit...(Colonial Laws, V: 529).

If the New York constable was unhappy and corrupt in his job, it was at least partially because he was not part of an official and well managed organization. Says Richardson (1970: 11), regarding the New York constabulary, "It was not a police force nor could it be expected to perform like one...it could not keep the peace in a restless, restive society. It did not have the authority or the resources to prevent crime and maintain order."

Bridenbaugh (1971a: 67-68) claims a direct relationship between urbanization and an increased need for quality police protection. Describing the ineffectiveness of crime control in colonial American cities, he points out that New York City was not unusual in this regard. He stresses that no other eighteenth century city, in colonial America or Europe, did much better in maintaining order, and that New York City police protection was "well in advance of the

times," and was the only city that had a paid citizens' watch.

Repetto (1978: 3) explains that in a transitional, 'modernizing' culture, such as was New York colony, the job of the police officer becomes more difficult and less desirable. In a predominantly agricultural society, says Repetto, villagers knew their neighbors, and social control was maintained largely by peer pressure. Strangers, who were easily identifiable, were closely watched. When a constable needed assistance he could invoke the "hue and cry" and expect the cooperation of local able-bodied men in pursuing the offender. As urbanization increased, cooperation decreased, and "...in the impersonal conditions of urban life, recognizing strangers was more difficult and the prospect of support from one's neighbors dubious. To raise the hue and cry was likely to bring to the scene only friends of the accused."

With the development of towns and municipalities in New York colony, the definition of 'crime' would change, and so too would the demands placed on the crime fighter. An excellent example of this is constables increasingly being charged with the responsibility of apprehending counterfeiters. In seventeenth century New York, when counterfeiting was regarded as a "cheat," there was little governmental focus on the arrest, prosecution, or punishment of counterfeiters. In the eighteenth century, New York commercialized, money assumed great significance, counterfeiting became a felony, and constables were required to pursue and arrest counterfeiters.

Those who tried to perform the chore, and failed, often found themselves fined.

One of the best discussions of the wide scope of duties colonial New York constables were expected to perform, and the little respect they received for their efforts, is found in Goebel and Naughton (1970: 401-402) who liken the constable to a "spit-dog:"

> The constable is, of course, the spit-dog of the treadmill of government. His is the arduous task of serving precepts which may issue from any part of the province...The business of collecting rates is upon him, and he does the distraining of the recalcitrant. He must pursue the fleeing malefactor, and he must present (prosecute) him....Whatever a justice of the peace may wish to pass on to him the constable cannot avoid. Even his house is no sacred castle, for the law provides that he must give sanctuary to the distracted wives of his bailiwick. Small wonder that scruples against taking the oath were often discovered.

In addition to receiving little public cooperation or respect, the colonial New York constable often was abused while attempting to perform his duties. Lacking the weapons or force necessary to apprehend resisters, and confronting a population particularly contemptuous of authority, he was a ready target. A general belief prevailed that law officers were liberty violators, and thus a citizen needn't submit to an arrest unless the personal power of the constable made such submission the wisest response. Discussing the physical attacks faced by New York's constabulary, Greenberg (1976: 158) says:

> Perhaps the most obvious danger to constables was that they were often assaulted and resisted when they attempted to make an arrest. In fact, of the 312 cases of contempt of authority I have

collected, more than 70% involved attacks by citizens on officers of the law."

Says Scott (1957: 4), in discussing the dangers attendant upon constables and 'higher-up" law officers interested in the apprehension and prosecution of counterfeiters:

> Often it is not 'healthy' for officials to be zealous in prosecuting counterfeiters...John Munro, a justice of the peace of Albany County in New York, who had busied himself with the arrest and examination of suspected counterfeiters, wrote to Governor Tryon to ask to be excused from further service as a magistrate. 'What can a Justice do,' wrote Munro, 'when the whole County combines against him...my property is destroyed night and day & durst not say ill done.'

Despite popular opposition to law enforcement attempts, arrests and prosecutions did occur, for counterfeiting, and for many other crimes. Yet, due to the dishonest dealings of some officials, justice still was not necessarily served. According to Greenberg (1976: 165), summarizing a series of official documents:

> Sheriffs and constables took bribes to release prisoners in their custody or to fix juries; they extorted money from prisoners in exchange for preferential treatment, assaulted innocent citizens without cause, charged excessive fees, committed a variety of other crimes, and used their office as a protective device to advance their private interests. Furthermore, fines levied by the courts had a habit of ending up in the pockets of the men (often constables) charged with collecting them.

Colonial New York's Jail Keepers.

Like New York's constables, the colony's jailers were untrained, disrespected, poorly paid, and often corrupt. Their tasks were fewer than those of constables, but performed with similar distain and incompetency. They were not elected to service, but hired by local magistrates, who had a tiny, if any, pool of

applicants from which to choose. In rural areas and small towns sheriff and jailer were one. Sheriffs were appointed by magistrates and, if necessary, enlisted the aid of deputies in overseeing the jail. Occasionally inmates were released out of sympathy; frequently they were abused. Describing correctional facilities in eighteenth century America, Rothman (1971: 55-56), says:

> Eighteenth-century jails in fact closely resembled the household in structure and routine. They lacked a distinct architecture and special procedures...True to the household model, the keeper and his family resided in the jail, occupying one of its rooms; the prisoners lived several together in the others, with little to differentiate the keeper's quarters from their own. They wore no special clothing or uniforms and usually neither cuffs nor chains restrained their movements...
>
> Jail arrangements so closely replicated the household that some colonies feared that prisons would be comfortable enough to attract inmates...
>
> The colonial jails were not only unlikely places for intimidating the criminal, but even ill-suited for confining him. Security was impossible to maintain, and escapes were frequent and easy.

The generalized portrait Rothman paints of Colonial American jails is far rosier than the circumstances of the dreaded early New York jail. New York did not fear that its "prisons would be comfortable enough to attract inmates." Colonial New York prisons were uncomfortable, unheated, brutal holding facilities that intimidated criminals, provoked riots, and did not attract married jail-keepers willing to live on site, with their families. Rothman's claim that, "Security was impossible to maintain, and escapes were frequent and easy," is particularly applicable to the jails of New York colony.

Official records indicate that the jails of colonial New York were continually under attack for a combination of reasons, and that the colony experienced great difficulty in finding honest jailers who did their job decently and humanely. Complaints against the jails and jailers of New York appear in the court and council minutes of the colony, in the Colonial Laws of New York, and in private correspondence.

On June 24, 1719 an act was passed authorizing the "Justices of the Peace to Build & Repair Gaols..." The opening words of the statute make it clear that the jails were regarded as unhealthful and inadequate: "Whereas Several Gaols & Prisons within this Province for want of due repair, are become prejudicial to the Health of the Prisoners, & Insufficient for the safe Custody of them...(Colonial Laws, I: 1025)."

A statute of October 17, 1730, enacted to fund a variety of public projects in New York City, detailed why jail improvement was essential in its opening sentences. Emphasized was that the mobility and importation of criminals were making the city unsafe and unlawful, and thus improved jail facilities were needed:

> Whereas the Publick (sic) and Necessary Charge of Keeping the Peace, Maintaining of good Rule and Government...and putting the Laws in Execution daily increases Occationed (sic) by great numbers of Idle and dissolute Person Privately Conveying them Selves into the said City, many whereof are Suspected to be Convict Felons transported From England. Several of whom have Lately been Committed (to jail) for Felonys (sic) by them Perpetrated...and...have found means to escape from there with Impunity. And Whereas...the Common Gaols...are now very much out of Repair, and it appearing there is an Absolute Necessity not only to repair but to Enlarge...(Colonial

Laws, II: 645-648).

Covering the problems of both inadequate jail facilities, and counterfeiting, is a letter written by Attorney General John Kempe to Clear Everitt, the Sheriff of Dutchess County, warning the Sheriff that he would be in trouble if he permitted captured silversmith-counterfeiter Charles Hamilton of Poughkeepsie to escape the Dutchess County jail:

> I understand you have in your Custody one Charles Hamilton for counterfeiing Dollars...I know not what Conditions your Gaol is in, but trust that you will keep (him) secure that (he)...not...Escape from Justice. The Reason of my mentioning this to you, is because several Criminals have broke Gaol & made their Escape, lately from some of the Counties...and I should be very sorry should you be liable to be punished so severely as the Law directs for the Escape of a Felon, you will excuse my mentioning this to you, as I have no other Inducement but to take care Justice be done and as far as in one lies to prevent a publick (sic) Officer like you from being put to Trouble (Kempe Papers, May 1, 1761).

Fortunately for the admonished Sheriff, Hamilton committed suicide while awaiting trial. However, Kempe's letter illustrates why jail-keeping was an avoided occupation among conscientious citizens. Sheriff Everitt wasn't in the position to build a more secure jail; he might well be unable to detain an fleeing suspect, yet, he would be held criminally liable if a suspect escaped.

Not surprisingly, explains Greenberg (1976: 168), those willing to assume such a precarious position as jail-keeper "...were often of less than exemplary character." It was a "harrowing and frustrating experience," that frequently attracted men prepared to be negligent and corruptible in the post (e.g., those willing to

accept bribes to allow captured suspects to escape).

Juries In Colonial New York.

The Judiciary Act of 1683 established the use of grand jury indictments (as opposed to the earlier tradition of constable presentments) and petit juries. Summary justice was replaced by trial by jury for those who pleaded not guilty to an indictment (and were willing and able to assume court costs). Though considered a political privilege, jury trials were also considered a nuisance, by the government, and by those asked to serve as jurors.

Discussing the role of the jury, and the reluctance of jurors to serve, Greenberg (1976: 172) says:

> The jury was the pivot upon which the wheels of justice turned. The smooth functioning of the system required grand juries to hand down indictments and presentments, and petit juries to determine innocence or guilt. But it was difficult to find people who were willing to serve on juries of any kind. In almost every session of every court, fines were levied on veniremen who failed to appear...courts might even be forced to adjourn until a sufficient number of jurymen could be found...In addition, since juries were drawn from among the local freehlders who might sometimes have an interest in the outcome of a particular case, they sometimes performed their duties with less than total honesty.

As early as May 16, 1699 a bill was passed for "...ye Regulating and returning of able and Sufficient Jurors in Tryalls at Law." It specified that the colony was having trouble in procuring qualified jurors, and that those (twenty-one years or older) who were called, and refused to serve would be fined. The act stated that a jury should consist of "...twelve free & Lawful men of ye Neighbourhood (who have in their own names) a good house or message

w'th tenn (sic) Acres of Land (in the colony) ...a dwelling house free from all Incumbrance or a personall (sic) Estate to ye Value of fifty pounds free & Cleer (sic) from all Debts and Lawfull (sic) demands...(Colonial Laws, I: 387-388)."

Following this, a number of similar bills were passed attempting to assure the presence in court of sufficient numbers of individuals willing to serve on juries. On November 27, 1741 a statute enacted to correct a variety of abuses alluded to the fact that sheriffs and constables (who were charged with calling juries) frequently accepted bribes from prospective jurors eager to avoid jury service. Such practice, claimed the statute, narrowed the pool of qualified jurors. "(S)heriffs and other Ministers who for Reward may be Tempted to spare the most able, and Sufficient, and Return the Poorer and Simpler Freeholders and others less able to discern the Causes in Question..." were to be controlled by the stipulation that jurors could not be called to service more than once a year. This statute also stipulated that individuals who failed to appear after being summoned to serve on juries would be fined (Colonial Laws, III: 185-189).

The situation wasn't improved by the statute, and successive enactments contained similar complaints and potential solutions. As mentioned in regard to the difficulty encountered in enlisting citizens to serve as constables, many people preferred paying fines to performing public service.

The statute passed February 6, 1768, "...to prevent the Defaults of Grand and Pettit (sic) Jurors, Constables, and other Persons (Colonial Laws, IV: 1000-1001)," illustrates not only the decision to fine defaulters, but the admitted powerlessness of the government to collect fines and make the criminal justice system work properly. It began with the words, "Whereas thro' a defect of Sufficient Power in the several Courts of this Colony in levying Fines for the Defaults of Jurors,...they are become very Remiss in their attendance, to the Prevention and Great Delay of Justice..." and went on to present a new fines collection plan (which also didn't work, due to loopholes which encouraged corruption).

The Justices Of Colonial New York.

Just as jurors and constables defaulted on their duties, so too did justices of the peace. As early as 1684 an act was passed to prevent the already commonplace occurrence of judicial absences. Entitled "An Act to prevent Absences of Justices of the Peace from their Court," this statute ordered a £5 per day fine for justices who so defaulted on their duties.

Justices were appointed by the governor of the colony to serve in the various counties, and on the Supreme Court of Judicature. Within New York City freeholders elected 'magistrates' for the "...Wards where they live and in no other Ward..." for one year periods.

Extensive powers were granted to local justices of the peace in

the trying of both civil and criminal matters. Capital cases (which included certain counterfeiting offenses) were tried in the Supreme Court of Judicature. Generally, the justices of all the colony's courts were (low) salaried lay persons not formally trained in law, leading citizens of the community whom the governor commissioned to administer fair and impartial justice (in keeping with British tradition), as well as to oversee a staggering complex of other duties (Goebel & Naughton, 1970).

There are those who believe that colonial New York governors based their judicial appointments on personal preferences, and/or the limitations of time and place. In The History of the Province of New York, Smith (1814, VI,6: 373-374) claims that justices were, "...appointed by commission from the governours who ...sometimes grant...the administration to particular favourites in each county...There are instances of some who can neither write nor read..."

According to historian Lawrence Friedman (1973), New York colony had few trained lawyers or jurists from which governors could choose. The lawyers who came to New York from England frequently were appointed as governors and judges, but there was not a steady stream of them. However, says Friedman, throughout the eighteenth century law schools grew out of colonial New York law offices that shifted from the practicing of law to the teaching of it, and greater numbers of trained men did assume judicial posts.

Citing statistics, and emphasizing judicial ignorance, impotence, and the importance of the 'consent of the governed' in the effective administration of the law, Greenberg (1976: 175-176) states:

> In 1763 there were 328 justices of the peace in the province (excluding New York City), and of these 194 (59%) had no legal training or knowledge at all. There were, to be sure, copies of legal guides like Michael Dalton's The Countrey Justice, but these were of no use to a man who was illiterate...much of a J.P.'s authority and ability to enforce the law depended upon his standing with the local populace. A justice who was widely known to be as ignorant of the law as those he tried was likely to find his position in legal matters frequently challenged...
>
> ...The provincial government was flooded with a continuous outpouring of petitions from local residents asking that one justice or another be removed from office for maladministration, malfeasance, neglect of duty or some related offense...
>
> ...in practice, (judicial) officials were governing by the consent of the governed before the full development of the democratic idea and its formal institutionalization.

Hangmen In Colonial New York.

When a felon was sentenced to death in colonial New York the responsibility for his execution fell upon a hangman. A hangman could be a constable, jailer, or anyone else selected by the county sheriff to perform the public spectacle. Like other positions in the criminal justice system of colonial New York, but probably even more so, this post was hard to fill. Reference is made frequently, in court minutes, and in newspaper reports, to the delay of an execution, "for the want of a hangman."

Occasionally the "want of a hangman" was based on popular aversion to capital punishment (particularly as the colony became more commercial and 'civilized'), but more generally it was based on

community opposition to capital punishment for particular offenders or offenses, or, in cases of gang involment in a particular crime (e.g., counterfeiting), to the hangman's fear of retaliation. Given such circumstances, a hangman would be reluctant to incur potential citizen or accomplice wrath and ensuing physical attacks for his gallows performance.

As demonstrated in the case of counterfeiter Owen Sullivan (see pps. 284-285), a hanging, even of a notorious villain and counterfeiter convicted of a serious political felony, could be delayed because the sheriff couldn't come up with anyone to act as hangman (and also because the gallows had been cut down too). Quite likely, in this particular case, local hangmen feared for their own lives at the hands of Sullivan's accomplices, and weren't concerned with the nature of Sullivan's offense, or whether or not strong popular support existed for the court's decision to execute.

The Role Of Intercolonial Cooperation In Provincial Law Enforcement.

Colonial America was a collection of provinces. Federal law enforcement was as yet non-existent. Thus a criminal fleeing the colony in which he committed his offense could well escape apprehension and prosecution. As many criminals of the day (e.g., counterfeiters, horse thieves, pirates) were mobile, the resolution of any particular case might well depend upon intercolonial cooperation in the pursuit and return of fleeing felons.

Sometimes there was excellent cooperation between adjacent

colonies, but often there was not. Frequently this depended on the relationship between governors, differing perceptions of the seriousness of a particular offense, and/or the desire of one governor to assist another. New Jersey, Pennsylvania, and Connecticut often cooperated with New York officials in the apprehension and prosecution of counterfeiters; but the New England colonies, especially Massachusetts, were generally apathetic about the falsification of out-of-colony bills, and even their own bills.

A New York Council committee, reporting in 1773 on Massachusetts' negative response to New York's apprehension and detention of several Massachusetts counterfeiters operating in New York, with bogus New York currency, stressed that the counterfeiters were in violation of longstanding New York statutes, that counterfeiting was "...subversive of Commerce and Confidence, and all the Security of Civil Society," and that intercolonial cooperation was advised:

> Instead therefore of complaining of the Execution of our Laws against such enormous Offenders," said the lengthy report, "we might rather have expected the Aid of the Massachusetts Bay for their punishment, and that by Laws of their own they would have conspired to prevent the Infraction of ours...
>
> The Offence of counterfeiting the publick (sic) Coin by the Laws of England and of many other States is punished as a Species of Treason, and it seems strange to the Committee that so henious an Act should nevertheless by the Laws of the Massachusetts Bay be considered merely as a Trespass, for which the party injured is only to be recompensed in Damages, as though it was a mere private Wrong committed without Force.
>
> To the extreme Laxity of the New England Laws towards this Species of Offenders it may be owing that the Bills of Credit of this Colony (New York) are so generally and greatly disparaged...(Ms. Mins. Council, 1773, 26: 339-347).

Conclusion - Perception Without Punch.

The focus of this chapter has been on the response to counterfeiting of colonial New York's entire criminal justice system. An examination of this system supports the conclusion that legislatively, and officially, counterfeiting, and other crimes, were viewed as serious problems. Constables, jailers, jurors, justices, and others were held accountable, by law, for the required, and/or honest, performance of their various public services or obligations. Out-of-colony governors were urged to cooperate, where possible, in the administration of justice. As regards counterfeiting, New York was more diligent than several other colonies in addressing the problem. Yet, the perception, and portrayal, of counterfeiting, and other crimes, as serious offenses capable of hampering the development of the colony, did not greatly diminish criminality.

Perception and portrayal were not matched by performance. Lawmakers and law enforcers were themselves lawbreakers. The organization and professionalism required to combat crime were absent. Required education, resources, technology, techniques, and citizen and intercolonial support were weak or unavailable. Poor climate, communication, and transportation further limited New York's criminal justice process.

Here was a 'non-system' constrained by structural, and external, weaknesses that interacted to aggravate an already fragile

and vulnerable condition. The various participants in New York's criminal justice system willingly and unwillingly combined to make arrest, detention, and prosecution difficult. Yet, as regards counterfeiting, and quite likely several other criminal offenses, many cases did come to trial. The degree to which the courts followed the dictates of the laws, dealt with offenders efficiently, and discouraged recidivism is, if not impressive, at least encouraging. What is impressive is that the connection between commerce and counterfeiting was never accepted as untreatable; the perception of mounting criminality in the developing society was consistently accompanied by the belief that legal change could improve conditions and assist the modernization process.

SUMMARY AND CONCLUSIONS

The role of legal change in the modernization process has been the focus of this study. A major twentieth century theory has argued that increased property crime is a natural, inevitable, and uncontrollable consequence of modernization. Neglected in this theory is any discussion of law as a prime mechanism of crime control. No attention is paid to the fact that developing societies often view rising property crime as destructive to modernization and use law as a problem solver. This research has shown that counterfeiting was a serious threat to commercializing colonial New York, and was recognized as such by the legislature and courts of the colony.

Chapters II to VII have examined the relationship between the modernization process and legislation created to assist it. Modernization and legislation have been considered first in the

larger contexts of social change and legal change, and then, chapter by chapter, narrowed down to the specific contexts of commercialization and anti-counterfeiting statute law in colonial New York.

Commercialization, an early stage of the modernization process, has been a focus of this study as it is the stage at which many societies throughout the world now find themselves. The crime of counterfeiting has been researched because currency fraud is just the type of behavior serious enough to inhibit the development of a new culture. Colonial New York was chosen as a setting because it was a newly emerging, commercializing culture threatened by a wide variety of counterfeiting acts.

It is hoped that the findings of this study can inform third world modernization efforts occurring today. This, the concluding chapter, briefly summarizes each of the preceding chapters, discusses how insights gained from this research might be currently applicable, and suggests ideas in need of future study.

Chapter I: The Relationship between Social Change and Legal Change.

Societies change over a period of time as a result of population shift, cultural diffusion, religious transformation, political transformation, crises, and ecological transfigurement. Such change may or may not be a positive phenomenon; frequently this depends on one's perspective. In some cases, social change is slow and imperceptible. In other cases, such as we're seeing today in Eastern

Europe, and other parts of the globe, the change is discernible, disquieting, and violent. In almost all cases, societies undergoing rapid social change want calm in the midst of perceived and probable chaos; and law is viewed as a primary means of having it, as a control capable of aligning social change with social well-being. The questions always to be addressed are: Whose social well-being? Who benefits from the social changes occurring in a culture, and who may be hurt? Which group interests are most and least served by associated legal changes?

Social change spurs new laws; and new laws are enacted to steer social change toward specific goals. As illustrated in this study, special interest groups are often the immediate promoters and profiters of this reciprocal relationship, though advantages gained may ultimately benefit the majority of the society. Before America rushes in to assist and advise currently emerging and reemerging former U.S.S.R republics, and other changing societies, it is critical that we analyze who the promoters and profiters are of occurring social and legal change, and who they ought to be. We must study who will benefit over the short and long term. We must examine how consistent new legislation is with goals being tendered for world consumption and world aid.

Chapter II: Modernization and Law.

Modernization is a singular aspect of social change (and commercialization, which is one focus of this study, is a singular

aspect of modernization). A society can change without modernizing; if it modernizes, vast change is inevitable. In terms of this study, modernization means the gradual transformation of society through urbanization, commercialization, secularization, industrialization, law, science, and technology. Frequently law serves as an indicator and facilitator of modernization.

The modernization process is popularly associated with economic and educational progress. It is considered particularly desirable by those urban business classes who immediately profit from it. The rural working class, divorced from its traditional values during modernization, gains little from it, over the short term at least. Generally acknowledged is that modernization contains positive, as well as negative, aspects, with the positive outweighing the negative.

Economic and educational advancement do not bring universal improvement to a culture (the expectation is that they will enrich the existence of a sizeable proportion of a population over the long term). Such advancement is accompanied by related, law-laden political, social, moral, and scientific consequences which cause both pleasure and pain. Bauer (1972: 25) puts it well when he says, "(E)conomic development is but one aspect of the total historical evolution of societies, and one which,...is inseparable from other elements of social life."

Law is the handmaid of modernization in that legislation is

devised, and modified, to assist a modernizing culture's changing material goals and values, and to discourage dissent. Sometimes such legislation is effective; often it is not. Frequently lawmakers are out of touch with the feelings of the population that will be subject to their enacted legislation. An examination of the creation and enforcement of a culture's laws provides an insight not only into the perceived economic success or failure of that culture, but also into the political and social structure of that society, into the society's fears, goals, and needs.

Today the tendency exists to view a third world country's modernization efforts, goals, and needs in terms of superpower accomplishments, and superpower procedures. Such vision is myopic, costly, and insensitive. An inspection of the laws of a developing economy can inform us as to what the modernizing culture hopes to achieve over the short term, and as to whether its legislation might assist its goals (as was the intent of the anti-counterfeiting statutes of commercializing colonial New York). What we wish to contribute to a modernizing society may be decades, or centuries, away from what that culture wants or is prepared to handle. A society legislating the use of oxen drawn plows may well be loathe to receive a shipment of automated tractors. Cultural studies, based on an exploration of existing and proposed legislation in underdeveloped countries, are badly needed.

Chapter III: Modernization, Crime, and Thwart Law.

Positing a causal connection between modernization and property crime based on an analysis of politically, economically, and socially disparate societies over a period of two hundred years, criminologist Louise Shelley claims that crime is the "hallmark of modernization." This study accepts her conclusion, but questions both her contention that the crime accompanying modernization is "uncontrollable," and her neglect of the role of law as a factor in modernization.

Under certain circumstances well-written criminal law is likely to inhibit the connection between modernization and rising property crime. Such legislation is termed 'Thwart Law' in this study. Thwart Law is utilitarian and humane legislation containing, within the text of the statute, precise provisions and stipulations designed to foil or frustrate criminal behavior. Focus is on genuine prevention, rather than after-the-fact punishment. Unlike much criminal law, which is intentionally or unintentially vague, unenforceable, carelessly written, loophole-laden, or solely retributive (see Illustration 9), it is potent and promising.

Thwart law is an ideal form of legislation for developing societies not yet plagued by a profusion of powerful lobbyists and special interest groups capable of weakening, or killing, socially salutary legislation.[1] Property crimes are thwarted by legislative

[1]Though special interest groups do exert legislative power in developing societies, there are many less such groups, and conflicting agendas, than in modernized countries.

CAPITALL LAWES.

1. If any person within this Government shall by direct exprest, impious or presumptuous ways, deny the true God and his Attributes, he shall be put to death.

2. If any person shall Commit any wilful and premeditated Murder, he shall be put to Death.

3. If any person Slayeth another with Sword or Dagger who hath no weapon to defend himself; he shall be put to Death.

4. If any man shall slay, or Cause another to be Slain by lying in wait privily for him or by poisoning or any such wicked Conspiracy, he shall be put to Death.

5. If any man or woman shall lye with any Beast or Bruite Creature by Carnal Copulation they shall be put to Death, and the Beast shall be Burned.

6. If any man lyeth with mankind as he lyeth with a woman, they shall be put to Death, unless the one party were Forced or be under fourteen Years of age, in which Case he shall be punished at the Discretion of the Court of Assizes.

7. If any person forcibly Stealeth or carrieth away any [The words "man or" here occur in Roslyn copy.] mankind; He shall be put to death.

8. If any person shall bear false witness malliciously and on purpose to take away a mans life, He shall be put to Death.

9. If any man shall Tratorously deny his Majesties right and titles to his Crownes and Dominions, or shall raise Armes to resist his Authority, He shall be put to Death.

10. If any man shall treacherously conspire or Publiquely attempt to invade or Surprise any Town or Towns, Fort or Forts, within this Government, He shall be put to Death.

11. If any Child or Children, above sixteen years of age, and of Sufficient understanding, shall smite their Naturall Father or Mother, unless thereunto provoked and forct for their selfe preservation from Death or Mayming, at the Complaint of the said Father and Mother, and not otherwise, they being Sufficient witnesses thereof, that Child or those Children so offending shall be put to Death.

Illustration 9: Retributive Criminal Laws of Colonial N.Y.

SOURCE -Colonial Laws of N.Y., 1664 to the Revolution.

As New York commercialized, seventeenth century penal thwarts such as these were accompanied by more utilitarian and humane techno- and perimeter thwarts such as those found in the eighteenth century anti-counterfeiting laws of the colony. Law became oriented towards prevention, as well as punishment.

in-text clauses that deter an act before it occurs (techno-thwarts), complicate the completion of an act (perimeter thwarts), or make the punishment for committing the act too severe to risk (penal thwarts).

The incentive to commit an act that the government is labeling a crime is reduced by thwart law. Illustrated by the anti-counterfeiting legislation of colonial New York, thwart law is statute law devised to obstruct, restrict, and suppress already experienced, and thus foreseeable, illegal behavior associated with property, or non-violent, offenses.

The lawmakers of colonial New York did not say to themselves, "Let us create Thwart Law to assist modernization in our colony;" but the idea of legally thwarting property crimes capable of interfering with commercial development was very much on their minds, and often mentioned in their statutes.

In a newly developing society thwart law, ideally, serves any and all interest groups.[1] It protects the process of economic development, and thus is important to all members of the culture. However, this can be a theoretical, rather than a realistic, perspective, particularly as time goes on. Certain individuals and

[1]In trade-oriented colonial New York monied merchants and businessmen, who needed a stable currency in order to prosper, were initially better served by anti-counterfeiting legislation than were rural farmers who frequently relied more on barter than money as a medium of exchange. Ultimately, however, rural farmers would want to 'sell,' rather than barter, their surplus produce, and sound currency values would serve their interests too.

groups will see the value of thwart law as relevant to their todays and tomorrows, and will observe such legislation. Marginal offenders might be deterred based on cost/benefit analyses. But other groups will be short-sighted, uninterested in protecting their tomorrows, concerned only with getting through their todays. This was true in colonial New York, and it is true in developing societies today.

Assuming human nature too difficult to change quickly, studies are needed on legislation most likely to thwart the short-sighted, the risk taker, and the professional criminal. The concept of thwart law is viable and valuable; but there always will be those intent on, and capable of, thwarting thwart law. Thwart law of the highest caliber is required. Needed are legal minds trained in the creation of optimal thwart legislation for developing economies, as opposed to lawyers who occasionally write new laws merely out of a socio-legal obligation to do so, or for increasing their political profiles.

Chapter IV: Commerce and Counterfeiting in Colonial New York.

Commercialization is a precipitator of property crime. In an agricultural, barter economy where primary bonds are strong and mobility limited, the incentive to engage in property crimes is minimal. The rewards are small and the likelihood of detection and community disapproval is large. When a society commercializes, money and material goods assume greater significance, citizens become increasingly mobile, outsiders enter the culture, the population

expands, and informal community controls diminish. In keeping with Louise Shelley's argument, property crime is likely to rise rapidly. Such is the case in commercializing cultures today; and such was the case with counterfeiting frauds in colonial New York.

As New York commercialized, property crime increased. Counterfeiting, which was initially treated as a civil offense, soon became a felony. An increase in commercial activity made money more important, counterfeiting more frequent, and the development of the colony more endangered. Compounding the likelihood of counterfeiting was Britain's repressive monetary policies, which intensified an already existing currency scarcity in the colony.

Discussing twentiethth century fears regarding the development of third world societies, Alpert (1963: 199-200), expresses attitudes similar to those held in seventeenth and eighteenth century England, beliefs that indirectly led colonial New Yorkers to engage in criminal acts in the pursuit of various commercial goals:

> In view of the existing economic dependence of the underdeveloped countries on the industrial economies of the West, the fear is sometimes expressed in the latter that economic development and industrialization would deprive Western countries of their supplies of raw materials and of markets for the products of their industries, and thus lead to the stagnation and even decline of their economies. This opinion is still widely held in Western Europe and reflects the traditional mercantilist attitude towards colonies..."

The more currency restrictions Britain placed on commercializing New York, in an attempt to maintain and bolster its own economic position, the greater the rise in counterfeiting, and mother country

impotency to control it. New York's economy became increasingly fragile and vulnerable, and it would take a war to establish New York (and the rest of colonial America) as an independent player in world markets.

Today's underdeveloped societies, just like colonial New York, are dependent on world markets. Yet the goals of certain world markets may well be at odds with the goals of certain newly developing societies. This is especially true in regions of the Middle East today. To the extent that such antagonisms can be mediated by discussion and compromise, rather than by war, everyone's interests may be safeguarded. Studies are needed on how best to reconcile the often conflicting trade perspectives of today's underdeveloped and developed countries.

Addressing the related issue of whether present underdeveloped countries face greater obstacles to material advance than did developed countries in their earlier history, Bauer (1972:473) says:

> In one important respect the underdeveloped world is certainly better off - it has access to the fruits of scientific and technical progress elsewhere to a far greater extent than the now-developed countries had in the past.

This is true, but developing cultures also have to fear the "fruits of scientific and technical progress" should their superpower trading partners use such "fruits" against them. Scientific and technical progress can be a mixed blessing. "Access" must not be confused with imposition, or infliction. Developed countries have to

be wary of intentionally, or unintentionally, imposing their science and technology on developing societies. Research is needed on distinguishing 'access' from 'imposition,' and on the optimal use, in this regard, of the science and technology of developed countries.

Chapter V: The Anti-Counterfeiting Laws of Colonial New York.

A growth in counterfeiting activity prompted commercializing New York to enact legislation aimed at suppressing the problem. This legislation is especially interesting because it illustrates (1) the use of legal change, in a modernizing culture, as an indicator of the rising perception of crime, and the need to control it, and (2) the use of thwart law by a developing society.

Influenced by British common and statutory law, but adapting its legislation to the circumstances of place and problem, New York wrote into its laws techno-thwarts, perimeter thwarts, and penal thwarts aimed at curtailing specific, and newly arising, counterfeiting frauds. Intricate currency design provisions, for example, were written into bill of credit emission enactments in order to make the bills harder to imitate. Variants of counterfeiting (e.g., passing a New York bill in New Jersey) were criminalized as it became evident that such variants were occurring. Greater thwarts and penalties were mandated for more frequently occuring offenses. Often case law triggered statute law. Law was a dynamic process. The more sophisticated and daring counterfeiters became, in terms of finding loopholes in the laws, the more laws were enacted to address the new twists.

An examination of the various anti-counterfeiting enactments reveals an ongoing interplay between commercialization and legislation. Commercialization kindled the need for protective currency and counterfeiting legislation; and currency enactments were written to assist commercialization and deter counterfeiting. Statutes, for example, mandated the use of specific currency designs that made fraudulent imitation difficult, established currency values to be observed in trade, called in worn and debased emissions, and restricted the amounts of bills of credit issued.

Assuming the connection between modernization and crime posited by Louise Shelley, the anti-counterfeiting legislation of colonial New York can be viewed as an example of a restrictive intervening variable, and a facilitator of commercialization. It can also be viewed as a journey through a developing economy. The legislation shows a society moving from exclusive reliance on coin currency to experimentation with paper currency. It shows a culture becoming increasingly more mobile, militant, trade oriented, indebted, concerned with its credit image, and coping with organized crime. It also shows a society becoming inured (as it became more threatened) to the use of capital punishment for an offense that began as a "cheat," or minor property offense, and incrementally became a treasonous felony.

Thwart law is well suited to a crime such as counterfeiting. A perusal of other laws of colonial New York reveals that it also was

used in other enactments designed to assist commercialization (e.g., "An Act to prevent Frauds in the Sale of Damaged Goods imported into this Colony"). Studies are needed to determine areas and frauds most amenable to thwart law, where such legislation is most and least likely to work, and how it must be adapted to differing offenses.

Chapter VI: The Record Shows.....

Though thwart law is socially constructive and humane, the question remains, does it work? Does it thwart behavior it is written to thwart? In terms of counterfeiting in colonial New York the answer is a strong maybe. Such information can only be gotten at indirectly, non-statistically. We're dealing with a small, centuries old population sample, poor record keeping, and an inability to control for partial variables. It is difficult to measure the unmeasurable, to calculate the degree to which something did not occur as a result of old thwart statutes. An attempt has been made to do this here, though the major concern of this study has been on the importance of legal change in the modernization/crime relationship.

Judging from court records, and other primary and secondary sources, New York's anti-counterfeiting laws appear to have been somewhat effective. Historical studies by Kammen (1975), Korver (1990), Newman (1976), and Scott (1953), all suggest that New York was more successful in combating counterfeiting, and in maintaining the integrity of its currency, than were those colonies that ignored their currency debasement, did not regard counterfeiting as a serious threat until well into the latter half of the colonial period, did

not enact carefully constructed laws, and did not enforce the laws they had.

According to Scott (1991), the rate of counterfeiting remained more stable in New York than in other colonies; and New York's currency was considered sounder than that of most other colonies. Court records show no cases of recidivism for the same indictment within the colony. It seems as though counterfeiters took the laws seriously in that, once discovered, they moved their operations to other colonies, or engaged in variants of counterfeiting not yet criminalized (prompting legislators to address such cunning in newly worded enactments). Additionally, the record shows a shift in the typology of perpetrators from individuals of all classes and occupations to professional criminals and gang members.

A study of the ninety-nine court cases compiled for this study suggests that though physical evidence was frequently presented, counterfeiting frauds were difficult to prove (partially explaining the small number of court cases). 'Intent' to deceive had to be established. Character witnesses were the significant determiners of a case. Except in one instance, defendants who produced witnesses to attest to their integrity, and/or to their need for jury compassion, were acquitted. In those cases where only Crown witnesses appeared, convictions were numerous. Pardons were sometimes given to accomplices who turned state's evidence, or in instances where the government was reluctant to see a particular perpetrator hanged.

It is not surprising that as new variants of counterfeiting became capital offenses, counterfeiting frauds were practiced more by

savvy gangs and less by ordinary citizens (also partially explaining the small number of court cases). Quite likely, ordinary citizens were less inclined to risk their lives in order to benefit from a bogus bill or coin. Yet, it must be noted that making counterfeiting a capital offense was problematic. In several cases defendants were acquitted, or downcharged, not because they were believed innocent, but because a jury was reluctant to condemn them to the gallows for their crimes.

To be studied in this regard, in the construction of thwart law in developing societies, is whether penal thwarts mandating capital punishment, or exceptionally harsh punishments, serve to deter a crime, or to deter a conviction. Under what circumstances might justice be better served if a jury felt it was condemning a guilty individual to a punishment other than death?

Chapter VII: Constables, Jailers, Jurors, and other Participants in Colonial New York's Criminal Justice System.

Notwithstanding that the lawmakers wrote effective anti-counterfeiting legislation, or that the judicial system, to some extent, observed these laws, the overall quality of criminal justice in colonial New York was poor. Too many essential participants in the criminal justice system failed to fulfill their obligations.

For one reason or another, the public was frequently unwilling, or unable, to cooperate with law enforcement officials in apprehending and prosecuting offenders. Spirited and liberty

cherishing, New Yorkers were wary of living in anything that hinted of a police state. Often they were willing to sacrifice legal protection to maintain their perceived freedom. As regards counterfeiting, for a long time much of the public did not consider it a serious offense. Even when individuals might have wanted to assist law enforcement efforts, the nature of counterfeiting was such that they couldn't; they were unable to distinguish false from real currency, or recall who had passed them a bogus bill or coin.

Compounding the problem of public non-support for law enforcement, or an inability to assist law enforcement efforts, was the fact that New York's constables were no more committed to law enforcement than were the population that they served. They were generally unwilling to serve (though required to do so by law), frequently delinquent in their duties, untrained, poorly paid, disrespected, and quite often corrupt.

Though not required to serve, New York's jailers were similarly non-professional, low paid, and corrupt. They were the overseers of insecure prisons, and frequently assisted suspects in their escapes --occasionally out of sympathy, more often as a result of bribes.

Justices were often legally ignorant, misused their power, and failed to show up for trials. Jurors were reluctant to serve, and many cases were dismissed for lack of a sufficient number of jurors. Even the imposition of fines on jurors unwilling to serve, failed to encourage jury attendance.

Assuming a suspect was captured, tried, convicted, and sentenced, in many instances he escaped punishment "for want of a hangman," or because he was able to flee to another, non-extraditing colony. Intercolonial cooperation in the capture and return of fleeing felons was minimal. Even when various local and out-of-colony officials attempted to do their jobs honestly and well, they were often hampered by New York's mountainous terrain and harsh climate.

Essentially, colonial New York's criminal justice system was constrained by interactive internal and external structural weaknesses. Yet, to some degree, this 'non-system' worked; and this can be attributed largely to the superior quality of the colony's legislation. Despite lack of coordination and cooperation from many participants in the criminal justice system, criminality was contained because it was averted before it happened; it was averted by thwart law.

A Final Word.

The problem of counterfeiting in colonial New York, and in the other American colonies, was largely solved after the Civil War. The introduction of a national currency in 1861, and the establishment of a national agency (the United States Secret Service) dedicated to the elimination of counterfeiting, were significant in thwarting counterfeiting activity. Counterfeiting ceased to be a capital offense. Yet, the anti-counterfeiting laws of colonial New York are still valuable today in that they teach us an unexpected lesson.

It is commonly believed that criminal justice, in any place or time, must be a combined endeavor, that the components of the system can be no better than the total society, that the inability to reduce crime is a function of citizen and system ignorance, indifference, and immorality. This message contains truth, but it is not the final word.

Criminal justice is not an all or nothing achievement. Just as one good juror can make a difference, so too can one good law. Certainly thwart law is most likely to be effective when an entire population, and an entire criminal justice system, are committed to it. But America can not wait for this to happen. Such a situation is idealistic and improbable. Progress in criminal justice will always be incomplete and incremental. To the extent that our states and federal government judiciously try partial variables, such as thwart law, non-traditional educational techniques, new technological applications, and other hopes that are out there for the grab, we come closer to achieving the benefits of modernization without the burdens.

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APPENDIX: METHODS AND SOURCES

As this study has used an analysis of the anti-counterfeiting legislation of colonial New York to illustrate the relationship between modernization and law in a developing society, statute law covering counterfeiting fraud was carefully examined. The five volume collection of the Colonial Laws of New York from the Year 1664 to the Reveloution was searched for (1) individual coin and paper counterfeiting enactments, (2) bill of credit authorization acts containing counterfeiting related paragraphs, and (3) statutes repealing, reviving, and amending these laws.

The individual counterfeiting enactments sometimes provide information on the case law that provoked the statute, or mention of the motivation behind the statute (e.g., to protect the commerce of the colony). The bill of credit authorization acts contain clauses justifying the issuance of the currency (e.g., to finance a military expedition), and mandating various techniques to make its imitation and circulation more difficult. Though a series of counterfeiting statutes were passed, limited primary references exist (outside of the texts of the laws themselves) to evaluate the social attitudes behind them.

Primary sources which might be of value in interpreting the substance of the counterfeiting statutes are sparse. Legal encyclopedias contain no leading cases of any variant of

counterfeiting in colonial New York as convicted felons were denied appellate review as a matter of law. (No record of appellate litigation exists in any of the American colonies for acts of counterfeiting fraud.) It would be helpful to know, for example, how colonial appellate courts believed that behavior such as "knowingly" passing a fraudulent bill could, or should, be determined.

(What could be called) the legislative histories on colonial New York statutes were carefully scrutinized and found unrevealing by current standards. They do not contain any controversies that might have preceded the passage of particular counterfeiting statutes, or even mention of whether such statutes were passed with little or no debate. The Journal of the Legislative Council of New York, the Minutes of the Common Council of the City of New York, and the Journal of the General Assembly of the Colony of New York note the mechanics of how counterfeiting legislation was enacted (i.e., the formal presentation of a bill, the passage of it by the Legislative Council, the sending of it to the General Assembly for "concurrence"). There is no record of any discussions that took place regarding the actual content of any of the counterfeiting laws. Bill jackets, which contain such information, were a post-Revolutionary War development.

An examination of colonial New York court records was vital for this study. Procedures and patterns of prosecution revealed in

these records give us some insight into how colonial New York treated counterfeiters, and the extent to which it used counterfeiting laws as a mechanism of crime control. However, this primary source is not without significant flaws. First of all, only a portion of the original records have survived. There are no extant court records for many counties of New York. The prosecutions analyzed in this study are based primarily on the records of the New York City Sessions courts (for which exists the only complete run of records, 1691-1775), and the Supreme Court of Judicature (where records exist for the years 1691-1739 and 1750-1776), which covers some jurisdictions outside of the New York metropolitan area.

The ninety-nine cases covered in this study represent only a fraction of the incidents of counterfeiting in colonial New York. These are the counterfeiting cases I was able to gather, which is nowhere near the full population of perpetrators who operated in the colony, but were never caught, or against whom complaints never were filed, or who were jailed prior to the recording of an indictment. Indictments, more than convictions, have been reported as arrest data is more available, detailed, and reliable than conviction data.

Particularly aggravating is the haphazard way in which some of these ninety-nine cases were recorded. Records are often incomplete, leaving us no way of knowing the resolution of certain

boundover cases, whether or not they ever were retried, or anything at all about the perpetrators and prosecutors. Though some records provide ample detail regarding the perpetrator, the specifics of the crime, the nature and number of the witnesses who testified, and reprieves given, others list only the name of the defendant, the variant of counterfeiting charged, the verdict, and the sentence (in the event of conviction). Often the records containing the most details covered extraordinary cases, prosecutions which were not typical of place or period.

Newspapers, in addition to filling in background facts on several of the cases poorly recorded in the court records, were another important primary source used to document societal fear of increased currency debasement, and the resort to law as a mechanism of crime control. The colony's newspapers published detailed warnings of the dangers posed by rising counterfeiting frauds and what to beware of in accepting the colony's circulating currency, specifics on how the crime was being perpetrated and laws that were being enacted to combat it, official instructions on dealing with bogus bills and their passers, legal proclamations offering rewards for the capture of counterfeiters, and synopses of trials and hangings. Unlike the court records, which were handwritten and often difficult to decipher, the newspapers were easy to read -- once a counterfeiting piece was located!

Newspapers were published in colonial New York beginning in

1725 with the New York Gazette, which was followed, consecutively, by several other newspapers. None of these papers are indexed; headlines are non-existent; and the only way to find every counterfeiting piece written is to search paper by paper, page by page, year by year - a tedious and terrible task. No attempt was made to do this for the entire colonial period. However, I thoroughly searched the papers for the two years preceding the enactment of an anti-counterfeiting law, and for those years (often overlapping the legislation years) in which counterfeiting cases received relatively detailed coverage in the court records. Discovered were several articles attesting to the fact that counterfeiting was perceived as a serious, solution-demanding threat in commercializing New York. Statistics were not supplied on the amount of fraudulent currency thought to be in circulation, or on the number of individuals presumed to be engaged in one or another form of counterfeiting. Concern was with alerting consumers, suppressing offenders, and reporting executions, not with presenting speculative numerical data.

Several other supplemental primary sources were also examined to obtain supportive data regarding commercialization and counterfeiting in early New York. The Minutes of the Governor and Council of New York Province, in addition to reporting mundane and routine meetings, provided the interesting and important insight that those in political power believed it essential to offer

reprieves and pardons to cooperative counterfeiting gang members, and capitally convicted counterfeiters, in exchange for information that might lead to the capture of the colony's most dreaded professional counterfeiters and gang leaders.

The unedited, published gallows statements and confessions of certain counterfeiters provide enlightenment on perpetrator attitudes towards crime and punishment in the developing culture. Unfortunately, though, few such statements and confessions are available, and of those that are, many appear to be little more than requisite, standard morality utterings. Also, quite likely, the most original statements do not express the attitudes of the majority of the counterfeiters who operated in colonial New York.

An exploration of collections of historical manuscripts and letters revealed that counterfeiting was thought to be widespread in New York colony, that statute law was considered a means of handling it, and that colonial officials and law enforcement agents, despite abundant legislation, often felt powerless, or frightened, to enforce existing orders or sanctions. Unavailable were any documents, other than political speeches, discussing solutions to the frustrations encountered by those attempting to discharge their duties and implement anti-counterfeiting statutes.

An examination of political speeches, urging counterfeiting suppression tactics such as official intercolonial cooperation in the apprehension of counterfeiters operating within several

colonies, proved especially rewarding. Not only does such a primary source attest to the fact that certain far-sighted local officials were solution oriented, and wanted to bolster the efforts of law enforcement and other government agents to contain currency debasement in New York and surrounding colonies, but one sees the stage being set for federalism -- and for a federal response to a provincial problem.

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